

## TRANSFEREES' EXHIBIT 18

### Request For Waiver

The Tribune Employee Stock Ownership Plan as implemented through the Tribune Employee Stock Ownership Trust, EGI-TRB, L.L.C., and Sam Zell (collectively the “Transferees”), proposed transferees of Tribune Television Company, licensee of television station WTIC-TV, Hartford, Connecticut (“WTIC”), and WTXX, Inc., licensee of WTXX(TV), Waterbury, Connecticut (“WTXX” and collectively with WTIC, the “Stations”) hereby request a temporary waiver of Section 73.3555(d), the newspaper-broadcast cross-ownership rule (the “Rule”), pending completion of the ongoing Commission rulemaking addressing the Rule.<sup>1</sup> Transferees request this temporary waiver of the Rule to permit the common ownership of WTIC, WTXX and the *Hartford Courant* (the “*Courant*”), a daily newspaper published in Hartford. The Commission eliminated the Rule in 2003, and the United States Court of Appeals for the Third Circuit upheld that elimination in 2004. Three years later, in a unique market that comprises one of the largest and most competitive media markets in the world, Tribune Company (“Tribune”) must be permitted to maintain its ability to broadcast and publish news in Hartford and Waterbury pending completion of the FCC’s extended proceedings to establish relaxed cross-ownership limits.

The Stations operate in one of the most diverse and competitive media market places in the United States, and from the time they came under common ownership with the

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<sup>1</sup> The Rule, adopted in 1975, provides that “[n]o license for [a] . . . TV broadcast station shall be granted to any party . . . if such party directly or indirectly owns, operates or controls a daily newspaper and the grant of such license will result in: [t]he Grade A contour of a TV station . . . encompassing the entire community in which such newspaper is published.” 47 C.F.R. § 73.3555(d)(3)(2002). In its *Further Notice of Proposed Rulemaking*, 21 FCC Rcd. 8834 (2006) (“*FNPRM*”), *see infra* n.5, the Commission is reviewing the cross-media limits that were adopted when the Rule was repealed in 2003.

*Courant* in March 2000, the already-abundant sources from which the public can obtain local news and information in their DMA have multiplied. Common ownership of the Stations and the *Courant* has caused no measurable diminution to diversity in one of the nation's largest television markets, and instead has resulted not only in keeping WTXX on the air, but in journalistic synergies that have contributed to the public interest in more and enhanced local news and public affairs programming. Under any applicable standard, Transferees are entitled to a temporary waiver of the Rule until the Commission completes its replacement of the Rule, and that action becomes a final order no longer subject to judicial review.

#### **I. Introduction and Summary**

Both Tribune Television Company and WTXX Inc. are wholly-owned subsidiaries of Tribune. Tribune is the parent of Tribune Broadcasting Company, which is the parent of Tribune Television Company, the parent of WTXX, Inc. The *Courant* is owned by The Hartford Courant Company, which is wholly-owned by Tribune. In March of 2000, Tribune merged with The Times Mirror Company ("Times Mirror"), the publisher of several newspapers, including the *Courant*. Under Commission precedent and policy, Tribune is permitted to own WTIC and the *Courant* through the license term for WTIC, which expired on April 1, 2007.<sup>2</sup> Tribune also is permitted to own WTXX and the *Courant* until the Commission takes final action on the renewal application of WTXX, pursuant to the Commission's decision in *Counterpoint*

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<sup>2</sup> See Amendment of Sections 73.34, 73.240, and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM, and Television Broadcast Stations, Second Report and Order, 50 F.C.C.2d 1046, 1076 n.25 (1975) ("1975 Order"), *aff'd sub nom. FCC v. National Citizens Committee for Broadcasting*, 436 U.S. 775 (1978) ("FCC v. NCCB").

III.<sup>3</sup> The license renewal applications for WTIC and WTXX were timely filed on December 1, 2006 and included a request for a permanent waiver of the Rule, or a temporary waiver pending the outcome of the FCC's ongoing review of the Rule.<sup>4</sup> In the instant transfer of control application, Tribune requests only a temporary waiver of the Rule pending final action on the Commission's *FNPRM*.<sup>5</sup>

The Commission eliminated the Rule in 2003, and as the Third Circuit emphatically stated, the "Commission's decision not to retain a ban on newspaper/broadcast cross-ownership is justified under § 202(h) and is supported by record evidence."<sup>6</sup> The Third

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<sup>3</sup> *Counterpoint Communications, Inc.*, 20 FCC Rcd. 8582, 8583 (2005) ("*Counterpoint III*"). The FCC originally granted Tribune a permanent waiver of the local television ownership rule to permit the permanent combination of WTXX and WTIC, but granted Tribune only a six-month temporary waiver of the Rule to permit the combined ownership of the *Courant* and WTXX. *Counterpoint Communications, Inc.*, 16 FCC Rcd. 15044, 15046, 15048 (2001) ("*Counterpoint I*"). Tribune subsequently was granted a six-month extension of that waiver, conditioned on using its best efforts to comply with the Rule and reporting to the FCC every 45 days on its efforts. *Counterpoint Communications, Inc.*, 17 FCC Rcd. 3243, 3245 (2002) ("*Counterpoint II*"). In August 2002, unable to sell either WTXX or the WTXX-WTIC combination, Tribune sought a permanent waiver of the Rule; alternatively, failing the grant of such relief, Tribune sought an extension of its temporary waiver through the WTIC and WTXX renewal terms or the resolution of the Commission's review of the Rule. *Counterpoint III*, 20 FCC Rcd. at 8583. On April 13, 2005, the Commission denied Tribune a permanent waiver of the Rule, but extended the temporary waiver to coincide with the renewal terms for WTXX and WTIC. *Id.* at 8584, 8590.

<sup>4</sup> See BRCT - 20061201APT; BRCT - 20061201AJE.

<sup>5</sup> As demonstrated in its Request for Waiver filed with its renewal applications, Tribune believes that even under the Rule and the criteria for its waiver, it is entitled to a permanent waiver of the Rule in Hartford, or at a minimum, a temporary waiver pending Commission action on the *FNPRM*. See *2006 Quadrennial Regulatory Review -- Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*; *2002 Biennial Regulatory Review -- Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*; *Cross-Ownership of Broadcast Stations and Newspapers; Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets; Definition of Radio Markets*, Further Notice of Proposed Rulemaking, 21 FCC Rcd. 8834 (2006) ("*FNPRM*"). Notwithstanding that belief and the showing made in its renewal application, Tribune's proposed transaction can be consummated if it receives an interim waiver pending completion of the rulemaking, the minimum relief that is justified in these circumstances.

<sup>6</sup> *Prometheus Radio Project v. FCC*, 373 F.3d 372, 398 (3d Cir. 2004), *cert. denied*, 125 S. Ct. 2902-03 (2005) ("*Prometheus*").

Circuit also held that reasoned analysis supported the Commission's conclusion that the blanket cross-ownership ban was "no longer in the public interest" because newspaper-broadcast combinations actually "can promote localism."<sup>7</sup> The Commission, affirmed by the court, found that the blanket prohibition "is not necessary to protect diversity," especially in the nation's largest markets.<sup>8</sup> Based on the very standard pronounced by the Commission in its initial biennial review, Tribune is entitled to the requested temporary waiver as the Commission endeavors to fulfill its decade-long commitment to revise the Rule to be consistent with today's marketplace.<sup>9</sup>

The Hartford & New Haven DMA (the "Hartford DMA") is the 28th largest in the nation (out of 210), and includes more than one million television households. Given its location in the Northeast corridor of the United States, residents of the Hartford DMA have access to local television stations, newspapers, and other media sources from four different states: Connecticut, Massachusetts, New York and Rhode Island. Further, because of the market's proximity to both Boston and New York City, residents of the Hartford DMA benefit from the diverse media sources available in two of the top-5 media markets in the nation.<sup>10</sup> Even without considering the impact of these media outlets, the Hartford DMA is served by more than 55 independent broadcasters and daily newspaper publishers:

- \* Eleven full-service television stations broadcast in the DMA, with seven of these television stations separately and independently owned.

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 398-99.

<sup>9</sup> *See infra* at 6, 13-14.

<sup>10</sup> Media outlets from Providence, Rhode Island and Springfield, Massachusetts also reach significant portions of the Hartford DMA.

- \* Six of the eight commercial television stations are owned independently, and at least six television stations owned by four different owners provide regularly-scheduled local news programs.
- \* Approximately 95% of the television households in the DMA receive service from cable television systems, direct broadcast satellite operators or other providers of multichannel video programming service.
- \* At least 12 daily newspapers are published and circulated in the Hartford DMA by at least eight independent publishers.
- \* In the Hartford DMA, there are at least 76 radio stations owned by 44 separate and distinct owners. Even if the count is limited to the FCC's newly-defined radio market for Hartford, there are at least 34 radio stations with 22 separate owners that provide news, information, talk and entertainment programming.
- \* Finally, broadband access to the Internet provides news and information at the touch of a consumer's fingertips. In Hartford, Yahoo, Google, AOL and MSNBC still provide the highest-accessed local websites, offering access to numerous news and information services. These local portals contain unique locally-originated content and serve as aggregators that provide and structure access to hundreds of local websites and weblogs ("blogs") originating from and focusing on the greater Hartford area.

Further, media sources from the greater Northeast corridor, including New York City and Boston, make the Hartford DMA one of the most unique, competitive and diverse in the nation.<sup>11</sup> The residents of the Hartford DMA traditionally have viewed broadcast television stations over the air from New York, Boston, Providence and Springfield in addition to the television stations that are licensed to communities in the DMA. These television stations include New York City stations owned by the four major networks, four commercial stations from Boston, and three stations each from Springfield and Providence. As the Commission previously has found in granting a permanent waiver of the local broadcast ownership rules to

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<sup>11</sup> See Declaration of Mark R. Fratrick, Ph. D., BIA Financial Network, ("BIA Fratrick Declaration") (attached hereto as Appendix 1), ¶¶ 3-9.

permit common ownership of stations in the Hartford DMA, “12 outside television signals have a significant presence in the Hartford/New Haven ADI, including 5 network affiliates, 4 independents and 3 PBS stations licensed to adjacent markets . . . .”<sup>12</sup> Almost every resident of the Hartford DMA thus has access to more than 15 broadcast stations of local interest, and given the 95% MVPD subscribership in the market, these residents have access to these stations and other programming on equal footing.

The combination of the Stations and the *Courant* has not measurably or adversely affected diversity or competition. Rather, the combination of television broadcast stations like WTIC and WTXX and daily newspapers like the *Courant* benefit consumers by making possible the presentation of more and higher quality news and public affairs programs, as the Commission has recognized. During the period of common ownership, Tribune has increased its news coverage on both stations from 10 to 16 hours per week of regularly-scheduled news programming and its non-simulcast news programming from 6.5 to 11 hours. The Stations also have enhanced their prime time and other regularly scheduled public affairs programming, their public service announcements, and their community service projects in the Hartford DMA, and in Waterbury specifically. These public interest benefits, recognized by the Commission in granting prior temporary waivers, have come at a time when the Stations face competition from more dominant in-market network affiliates, including one other duopoly, and out-of-market broadcast stations and cable channels. Absent Tribune common ownership, it is quite possible

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<sup>12</sup> *Arnold L. Chase*, 6 FCC Rcd. 7387, 7401 (Luton, ALJ 1991) (granting waiver of one-to-a-market rule for common ownership of WTIC-TV and two radio stations based in part on the diversity of the Hartford market).

that WTIC, and certainly WTXX, would be forced to reduce their news and public affairs operations, rather than provide the enhanced coverage that is currently provided on the Stations.

Given the procedural posture of the Rule and the substantial delay in replacing it, Tribune is entitled to a temporary waiver of the Rule pending the final outcome of the Commission's decision on remand from the Third Circuit in the *FNPRM*.<sup>13</sup> As the Commission indicated in its first biennial review nine years ago, temporary waivers pending the completion of rulemaking proceedings are warranted where (1) the rulemaking proceedings are of protracted length, (2) a substantial record exists on which to base a preliminary inclination to relax or eliminate a rule, (3) the Commission can conclude that the application before it falls within the scope of the proposals in the proceeding, and (4) a grant of a temporary waiver would be consistent with the goals of competition and diversity.<sup>14</sup> Four years ago, the Commission found that enforcement of the Rule as it was adopted in 1975 no longer serves the public interest, a finding that has been upheld by the United States Court of Appeals for the Third Circuit.<sup>15</sup> The Commission recognized that newspaper-broadcast combinations, especially in the largest markets, do not adversely affect competition but promote the public interest by delivering more and better local coverage of news and public affairs without seriously affecting diversity of viewpoint or programming. The Commission eliminated the Rule and established new "cross-media limits," under which Tribune would be permitted to own the Stations and the *Courant*.

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<sup>13</sup> *FNPRM*, 21 FCC Rcd. at 8834.

<sup>14</sup> *See supra* at 13.

<sup>15</sup> *See 2002 Biennial Regulatory Review - Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, 18 FCC Rcd. 13620, 13760 (2003) ("2003 Order"), *aff'd in part, remanded in part, Prometheus Radio Project v. FCC*, 373 F.3d 372, 398-400 (3d Cir. 2004), *cert denied*, 125 S. Ct. 2902-03 (2005).

The Commission either will reaffirm the limits adopted in 2003 or establish revised limits. In such circumstances, Tribune is entitled to a temporary waiver pending completion of proceedings on the *FNPRM*, and any application of the Rule to compel Tribune to sell or shut down WTIC, WTXX or the *Courant* would disserve the public interest, would be arbitrary and capricious, and would be unconstitutional under the First and Fifth Amendments.

Tribune also is entitled to a waiver pending the rulemaking as a result of its inability to sell the Stations except at an artificially depressed price.<sup>16</sup> As required by the Commission decisions in *Counterpoint I*, *Counterpoint II* and *Counterpoint III*, Tribune has undertaken significant efforts to market and sell WTXX, as well as investigated opportunities to divest the combination of WTIC and WTXX. As demonstrated by those efforts, Tribune has been unable to generate a reasonable offer that would result in its divestiture of the Stations. While Tribune continuously has investigated opportunities and engaged in appropriate efforts to sell the Stations, including up until the present day, few offers have been generated, and these offers either proposed unacceptable terms or a purchase price so far below market value that it would not permit Tribune to recoup its investment in the Stations. Tribune submits that purchasers at such a price also would be unlikely to maintain the present public interest programming provided by the Stations.

## **II. Tribune is Entitled to a Temporary Waiver of the Rule.**

The history of the Rule, from 1975 to the present, supports Tribune's request for a temporary waiver pending completion of the Commission's remand proceedings to revise the

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<sup>16</sup> *1975 Order*, 50 F.C.C.2d at 1085; *Cross-Ownership of Broadcast Stations and Newspapers; Newspaper/Radio Cross-Ownership Waiver Policy*, 16 FCC Rcd. 17283, 17284-85 (2001) ("*Newspaper-Broadcast NPRM*").

Rule as compelled by the Third Circuit's clear mandate that "the Commission's decision not to retain a ban on newspaper/broadcast cross-ownership is justified under § 202(h) and is supported by record evidence."

**A. Background of the Rule.**

1. *Adoption of the Rule and Application of its Waiver Policy.*

In 1975, the Commission adopted the Rule prohibiting ownership of a daily newspaper and a broadcast station serving the same community, seeking both to enhance diversity and foster competition.<sup>17</sup> In adopting the Rule, the Commission contemplated processing a "number of waiver requests" and set forth a general policy to govern these requests.<sup>18</sup> In doing so, the Commission first enumerated three examples involving financial hardship or distress: (1) an inability to sell a station; (2) a potential sale, but only at an artificially depressed price; or (3) where separate ownership and operation of the newspaper and station could not be supported in the locality.<sup>19</sup> The Commission also established a fourth and independent basis for waiver: if it can be shown "*for whatever reason* that the purposes of the rule would be disserved by divestiture, if the rule, in other words, would be better served by continuation of the current ownership pattern, then waiver would be warranted."<sup>20</sup>

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<sup>17</sup> See *1975 Order*, 50 F.C.C.2d at 1070-74.

<sup>18</sup> See *id.* at 1085. In affirming the reasonableness and constitutionality of the Rule in 1978, the Supreme Court relied upon the Commission's adoption of its waiver policy. See *FCC v. NCCB*, 436 U.S. at 802 n.20.

<sup>19</sup> *1975 Order*, 50 F.C.C.2d at 1085. In discussing these cases of financial hardship or distress, the Commission noted that in "any of these instances we contemplate waivers of reasonable duration, so that we shall not always be bound by a result based on outdated information." *Id.*

<sup>20</sup> *Id.* (emphasis added). The Commission has subsequently encapsulated its waiver policy as counseling in favor of waivers "if: (1) a combination could not sell a station; (2) a combination could not sell a station except at an artificially depressed price; (3) separate ownership and operation of a newspaper and

2. *Two Decades Later, One Decade Ago – Proposed Revision of the Rule.*

Two decades after the adoption of the Rule, and in recognition of the significant changes to the media landscape over that period, the Commission more than 10 years ago began calling for a change in the Rule. In 1996, in explaining its grant to Capital Cities of a temporary waiver (in lieu of the requested permanent waiver) of the Rule, the Commission said that it would “proceed expeditiously with an open proceeding to consider revising [its] newspaper broadcast cross-ownership policies.”<sup>21</sup> Chairman Reed E. Hundt separately observed that the Rule “is right now impairing the future prospects of an important source of education and information: the newspaper industry,” and stated his belief that the Commission should be able to complete the rulemaking within one year — before the expiration of the waiver granted to Capital Cities.<sup>22</sup>

The very next year (in 1997), Tribune proposed to acquire six stations owned by Renaissance Communications Corp. The Commission eventually granted Tribune a temporary waiver of the Rule pending the outcome of the promised rulemaking to permit the cross-ownership of a Miami television station acquired in the transaction and a Fort Lauderdale-based

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a station could not be supported in a locality; or (4) for whatever reason, the purposes of the rule would be disserved.” *Newspaper-Broadcast NPRM*, 16 FCC Rcd. at 17284-85. Despite its recognition that its waiver policy applied to combinations proposed or created after adoption of the Rule, during the next 30 years, the Commission granted only two permanent waivers involving newspaper and television station combinations, each of which involved significant elements of financial distress. See *Field Communications Corp.*, 65 F.C.C.2d 959 (1977) (“*Field*”); *Fox Television Stations Inc.*, 8 FCC Rcd. 5341 (1993), *aff’d sub nom. Metropolitan Council of NAACP Branches v. FCC*, 46 F.3d 1154 (D.C. Cir. 1995) (“*Fox Stations*”).

<sup>21</sup> *Capital Cities/ABC, Inc.*, 11 FCC Rcd. 5841, 5851 (1996) (“*Capital Cities*”).

<sup>22</sup> *Id.* at 5906 (Separate Statement of Chairman Reed E. Hundt). The Commission did not complete the promised proceeding within the year, and Capital Cities was then granted a temporary waiver pending the outcome of the promised rulemaking proceeding.

daily newspaper already owned by Tribune.<sup>23</sup> In their decisions, both the Commission and the United States Court of Appeals for the District of Columbia Circuit recognized the need for modification of the Rule, but held that the promised rulemaking was the appropriate venue.<sup>24</sup>

As required by the Telecommunications Act of 1996,<sup>25</sup> the Commission in 1998 undertook its first Biennial Review, which it completed in the form of the *1998 Biennial Regulatory Review*.<sup>26</sup> There, consistent with the statements of all of the Commissioners in *Capital Cities* and *Renaissance*, the Commission again concluded that the Rule needed to be modified, and promised to initiate a rulemaking proceeding to amend the Rule.<sup>27</sup> The Commission failed to initiate such a rulemaking, but did launch its 2000 Biennial Review, the report for which was issued in 2001.<sup>28</sup> The Commission once more committed to issuing a notice of proposed rulemaking.<sup>29</sup> It was against this background of repeated assurances and

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<sup>23</sup> *Renaissance Communications Corp.*, 13 FCC Rcd. 4717 (MMB 1998). The Commission initially granted Tribune a finite period to come into compliance with the Rule, but after review of the D.C. Circuit's opinion, extended the waiver until the completion of the rulemaking.

<sup>24</sup> *Renaissance Communications Corp.*, 12 FCC Rcd. 11866 (1997), *aff'd sub nom., Tribune Co. v. FCC*, 133 F.3d 61 (D.C. Cir. 1998) ("*Renaissance*"). The Newspaper Association of America ("NAA"), of which Tribune is a member, formally filed a Petition for Rulemaking on April 28, 1997.

<sup>25</sup> See Telecommunications Act of 1996, P.L. 104-104, § 202(h); see also 47 U.S.C. § 161. Section 202(h) requires the Commission to determine whether a rule is "necessary in the public interest as the result of competition" and to "repeal or modify any regulation it determines to be no longer in the public interest."

<sup>26</sup> *1998 Biennial Regulatory Review*, 15 FCC Rcd. 11058 (2000).

<sup>27</sup> *Id.* at 11109 ("we recognize that there may be situations in which the rule may not be necessary to protect the public interest in diversity and competition"). As part of the biennial review, the Commission specifically recognized that it had granted Tribune a temporary waiver for its Miami television station pending completion of the proposed rulemaking, and extended that temporary waiver pending the resolution of the rulemaking it was proposing to initiate. *Id.* at 11110-11111.

<sup>28</sup> *2000 Biennial Regulatory Review*, 16 FCC Rcd. 1207 (2001).

<sup>29</sup> *Id.* at 1218.

promises of expeditiously launching a rulemaking to bring the Rule in line with current competitive and technological realities that Tribune merged with Times Mirror.

3. *Five Years Later, Five Years Ago – An NPRM.*

More than five years ago, in September 2001, the Commission issued its Notice of Proposed Rulemaking regarding the modification or elimination of the Rule.<sup>30</sup> Approximately one year after taking a full set of public comments on the proposed modification of the Rule, the Commission in 2002 consolidated the *Newspaper-Broadcast NPRM* into an omnibus multiple ownership proceeding tied to the 2002 Biennial Review and its review of several cases remanded to it from the D.C. Circuit, and relaunched the inquiry (the “Omnibus Proceeding”).<sup>31</sup> The Commission took a further round of public comment, commissioned market studies, and held field hearings regarding the revision of the Rule and other issues of common media ownership. After a year of comprehensive study, the Commission completed its Omnibus Proceeding and in June 2003 released the *2003 Order* that revised many of the FCC’s ownership rules (including the Rule).<sup>32</sup>

4. *Four Years Ago – The Order Repealing And Relaxing The Rule.*

In the *2003 Order*, the Commission once more found that the Rule was no longer justifiable under the standard set forth in Section 202(h) of the Telecommunications Act of 1996,

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<sup>30</sup> *Newspaper-Broadcast NPRM*, 16 FCC Rcd. at 17283.

<sup>31</sup> *2002 Biennial Regulatory Review - Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Cross-Ownership of Broadcast Stations and Newspapers, Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets*, Notice of Proposed Rulemaking, 17 FCC Rcd. 18503 (2002).

<sup>32</sup> *2003 Order*, 18 FCC Rcd. at 13760.

as amended.<sup>33</sup> The Commission concluded that “television stations that are co-owned with daily newspapers tend to produce more, and arguably better, local news and public affairs programming than stations that have no newspaper affiliation.”<sup>34</sup> The Commission further concluded that the public interest in localism and local programming supported the repeal of the Rule because the “evidence suggests that the rule actually works to inhibit such programming.”<sup>35</sup> Regarding viewpoint diversity, the Commission concluded that “the synergies and efficiencies that can be achieved by commonly located newspaper/broadcast combinations can and do lead to the production of more and qualitatively better news programming and the presentation of diverse viewpoints, as measured by third-parties.”<sup>36</sup> The Commission also found that “relaxing the cross-ownership rule could lead to an increase in the number of newspapers in some markets and foster the development of important new sources of local news and information.”<sup>37</sup> Accordingly, the Commission replaced Section 73.3555 with a new set of cross-media limits, under which Tribune was entitled to retain its common ownership of WTIC, WTXN and the *Courant*.

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<sup>33</sup> See *supra* at 7 n.15.

<sup>34</sup> See *2003 Order*, 18 FCC Rcd. at 13802. The Commission concluded that “in light of the overwhelming evidence that combinations can promote the public interest by producing more and better overall local news coverage... the current rule is not necessary to promote our localism goal, and that it, in fact, is likely to hinder its attainment.” *Id.* at 13759.

<sup>35</sup> *Id.* at 13753.

<sup>36</sup> *Id.* at 13761. The FCC’s conclusions were supported by independent studies requested by the Commission. See David Pritchard, *Viewpoint Diversity in Cross-Owned Newspaper and Television Stations: A Study of News Coverage of the 2000 Presidential Campaign* (FCC Media Ownership Working Group Report #2), September 2000; Thomas C. Spavins, et al, *The Measurement of Local Television News and Public Affairs Programs* (FCC Media Ownership Working Group Report #7); September 2002; Scott Roberts, et al, *A Comparison of Media Outlets and Owners for Ten Selected Markets* (1960, 1980, 2000) (FCC Media Ownership Working Group Report #1), September 2002.

<sup>37</sup> *2003 Order*, 18 FCC Rcd. at 13760-61.

5. *Three Years Ago – Remand of The Order Relaxing The Rule*

The United States Court of Appeals for the Third Circuit remanded the *2003 Order* after it was challenged on appeal by a number of parties. The Court, however, affirmed the Commission’s decision to repeal the Rule and its blanket ban on newspaper-broadcast cross-ownership.<sup>38</sup> As the Third Circuit emphatically stated, “[t]he Commission’s decision not to retain a ban on newspaper/broadcast cross-ownership is justified under § 202(h) and is supported by record evidence.”<sup>39</sup> Concluding that “reasoned analysis supports the Commission’s determination that the blanket ban on newspaper/broadcast cross-ownership was no longer in the public interest,” the Court blessed the Commission’s decision to modify the newspaper/broadcast cross-ownership prohibition.<sup>40</sup> In doing so, the Court supported the Commission’s goal of increased localism by recognizing that “[n]ewspaper/broadcast combinations can promote localism” and that the existing ban actually “undermined” this important goal.<sup>41</sup> In addition, the Court agreed with the Commission that “[a] blanket prohibition on newspaper/broadcast combinations is not necessary to protect diversity.”<sup>42</sup> The Court found that “the Commission reasonably concluded that it did not have enough confidence in the proposition that commonly owned outlets have a uniform bias to warrant sustaining the cross-ownership ban.”<sup>43</sup> The Court thus upheld the Commission’s finding that retaining the ban was no longer in the public interest, and rejected challenges to the Commission’s conclusions that cross-ownership can increase the

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<sup>38</sup> *Prometheus*, 373 F.3d at 398.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 398-99.

<sup>42</sup> *Id.* at 399.

<sup>43</sup> *Id.* at 399-400.

quantity and quality of local news programming and that commonly-owned media outlets frequently present diverse viewpoints.<sup>44</sup>

The Third Circuit remanded the FCC's 2003 *Order* in June 2004; the Commission did not take any further official action until two years later. On June 21, 2006, the Commission adopted the *FNPRM*, and asked whether it should revise the 2003 cross-media limits, or whether it could justify those limits based upon additional evidence or analysis.<sup>45</sup> The Commission now has received comments and reply comments on the *FNPRM*, and has conducted four further formal field hearings on media ownership. It is within the context of its 11-year-old commitment to revise the Rule, its six-year-old initiation of the proceedings to revise the Rule, its nearly four-year-old action repealing the Rule and adopting a rule that would permit Tribune's continued common ownership of WTIC, WTXN and the *Courant*, and its pending *FNPRM* that the Commission must evaluate Tribune's request for a waiver of the Rule.

**B. The Standard for Granting a Temporary Waiver Pending Action on the *FNPRM*.**

Tribune is entitled to a temporary waiver of the Rule pending action on the *FNPRM* under the Commission's standard for a such waiver. Nine years ago, when the Commission in its first biennial review called for the initiation of a proceeding to examine the Rule, it acknowledged that it retained "both the right and obligation" to review any request for conditional waiver of the Rule pending the rulemaking "based upon the specific facts in a

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<sup>44</sup> Although the Court rejected certain elements of the rationale underlying the new cross-media limits, including some components of a "diversity index," the Court did not question the Commission's finding that the public interest benefits that can be realized in larger markets significantly outweigh the impact of a decrease in the count of independently owned outlets or voices.

<sup>45</sup> The full text of the *FNPRM* was released on July 24, 2006. Comments were filed on October 23, 2006 and reply comments were filed on January 16, 2007.

particular case.”<sup>46</sup> The Commission stated emphatically that “[w]hat is important is whether the public interest would be served by a grant of a waiver.”<sup>47</sup> The Commission recognized that it had granted temporary waivers pending proceedings examining some of the ownership rules at issue, including the television duopoly geographic market standards,<sup>48</sup> but indicated that such waivers were not appropriate where the Commission was just initiating its review, as it was for the first time at that time in 1998.<sup>49</sup>

Despite the fact that it was initiating its very first biennial review, the Commission did set forth standards suggesting when the grant of a conditional waiver of the Rule pending the rulemaking would be appropriate. As the Commission envisioned, “[t]his is most likely to occur where protracted rulemaking proceedings are involved and where a substantial record exists on which to base a preliminary inclination to relax or eliminate a rule.”<sup>50</sup> The Commission indicated that its precedent supported granting temporary waivers pending proceedings where the “Commission concludes that the application before it falls within

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<sup>46</sup> See *1998 Biennial Regulatory Review*, Notice of Inquiry, 13 FCC Rcd. 11276, 11294 (1998) (“*Notice of Inquiry*”).

<sup>47</sup> *Id.* at 11294-95.

<sup>48</sup> *Id.* at 11294, citing *Second Further Notice*, 11 FCC Rcd. 21655, 21681 (“Commission states that granting waivers satisfying the proposed standard would not adversely affect its competition and diversity goals in the interim”).

<sup>49</sup> *Id.* at 11294 (“In contrast to those situations, in our first biennial review of broadcast ownership rules, we do not believe it appropriate to provide for conditional waiver of any of the ownership rules under review in this proceeding solely because of the pendency of this review. *Here, for example, we do not have a protracted proceeding or substantial record on any of these rules that leads us to initial conclusions about any specific proposals to modify or eliminate any of the rules at issue here.*”) (emphasis added).

<sup>50</sup> *Id.*

the scope of the proposals in the proceeding, and a grant of an interim waiver would be consistent with the goals of competition and diversity.”<sup>51</sup>

Given these pronouncements nine years ago, this Commission must recognize that in the instant application Tribune proposes a temporary waiver that is grounded on the precise basis foretold by the Commission in 1998. In assessing this waiver request, the Commission cannot ignore the conclusions reached in the *2003 Order*, especially given that the Third Circuit upheld that portion of the Commission’s findings. More than three years ago, on the basis of exhaustive inquiry, review of thousands of public comments, and numerous empirical studies, the Commission fulfilled its commitment and replaced the Rule with less prohibitive limits that reflected the significant competitive and technological changes in the media marketplace. The Commission recognized that newspaper-broadcast combinations (1) do not adversely affect competition in the market, (2) promote the public interest by delivering more and better local coverage of news and public affairs, and (3) do not pose a widespread threat to diversity of viewpoint or programming.<sup>52</sup> Given these conclusions, and their confirmation by the facts described below, Tribune is entitled to a grant of the requested waiver. Having found the Rule outdated and counterproductive to the public interest, the Commission must recognize the protracted length of this proceeding, acknowledge the conclusions that were adopted and upheld by the Third Circuit, and realize that Tribune complies with the rules that were adopted and are being examined on remand. Under the standard enunciated for temporary waivers pending the rulemaking, it would be contrary to the public interest to force Tribune to divest WTIC, WTXX

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<sup>51</sup> *Id.*

<sup>52</sup> *See supra* at 9-11; *2003 Order*, 18 FCC Rcd. at 13748-49, 13752-54, 13756-57, 13759-60, 13767.

or the *Courant* merely because it seeks to transform itself from a publicly traded corporation to one owned by the ESOP Plan.<sup>53</sup>

If the Commission needed any other basis for concluding that the requested temporary waiver was warranted to preserve the *status quo* while it completes its remand proceeding on the *FNPRM*, it need look no further than the waiver standard adopted with the Rule. As the Commission indicated more than thirty years ago, waivers are warranted even in situations that do not involve economically distressed media properties where, “for whatever reason,” the “purposes of the rule would be disserved by divestiture” because the Rule “would be better served by continuation of the current ownership pattern.”<sup>54</sup> This criterion independently establishes a basis for waivers in situations where neither the broadcast station nor the newspaper is in financial distress. As Tribune will show, retention of Tribune’s common ownership of WTIC, WTXN and the *Courant* pending the Commission’s review of the *FNPRM* on remand better serves the public interest than forced divestiture under the Rule.

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<sup>53</sup> This request, therefore, is far from the situation where an applicant seeks a waiver pending completion of a biennial or quadrennial rulemaking. The Commission already has found that the Rule must be replaced, and has been upheld by a court of appeals in that finding. The Commission adopted a replacement rule that, although requiring review on remand, clearly permits the present cross-ownership. Tribune thus is entitled to a “hard look” at its request for an interim waiver pending completion of the rulemaking. See *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969). Additionally, the Commission cannot blindly apply a rule that would force Tribune to divest its interests in media where the Commission has affirmatively recognized that the facts underlying the rule and its application have changed and warrant a different result. At a minimum, the Commission must justify its departure from its previous conclusions. See *Radio-Television News Directors Association v. FCC*, 184 F.3d 872, 887 (D.C. Cir. 1999) (“*RTNDA*”).

<sup>54</sup> See *supra* at 6; *1975 Order*, 50 F.C.C.2d at 1085.

**C. More Than Five Years of Common Ownership of the Stations and the *Courant* Demonstrates that Harms from Common Ownership Do Not Exist.**

Given the competitive nature of the Hartford DMA and the abundance of media outlets available to consumers in the market, a waiver of the Rule to permit common ownership of the *Courant* and the Stations, ranked fourth and fifth in the DMA, will not adversely affect competition or diversity. In fact, as demonstrated in the next Section, these years of common ownership demonstrate the contrary: there are significant benefits realized from this common ownership. The Hartford DMA is the 28th-largest in the United States, consisting of 1,013,350 television households,<sup>55</sup> and, as demonstrated below, the population is served by approximately 100 traditional local media outlets, including 11 in-market television stations and at least 12 daily newspapers. The Hartford DMA contains 76 radio stations, with 34 radio stations in the FCC's newly-defined Hartford radio market. More than 55 independent "voices" operate these traditional media outlets, with seven independently-owned television stations (including six separate commercial station operators) in the DMA. The cross-media limits adopted in 2003 clearly permitted the Stations to be commonly-owned with the *Courant*, because there are more than nine television stations licensed to the Hartford DMA.<sup>56</sup> Even if the cross-media limits are ignored, the Commission should find that the requested temporary waiver of the Rule is in the public interest based on the unique diversity and competition of media in the Hartford DMA. For decades, at least 12 adjacent-market broadcast television stations traditionally have had

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<sup>55</sup> See BROADCASTING & CABLE YEARBOOK 2007 at B-164.

<sup>56</sup> See 2003 Order, 18 FCC Rcd. at 13804 ("With respect to markets with nine or more TV stations ('large markets'), we impose no cross-media restrictions. To begin with, markets of this size today tend to have robust media cultures characterized by a large number of outlets and a wide variety of owners.").

significant viewing in the market.<sup>57</sup> The Hartford DMA also has one of the highest MVPD penetrations in the nation, in excess of 95%, giving virtually all of the DMA households access to hundreds of video channels containing news, information and entertainment.

Moreover, the Stations and the *Courant* provide news, information and entertainment, and seek advertisers, in a market that has been revolutionized by widespread access to the Internet. Last year, more than 1.5 million people residing in the DMA accessed the Internet, and 71% of these online users accessed the Internet via a residential broadband connection.<sup>58</sup> Last month, more than 70% of the people in the Hartford DMA logged onto the Internet from home, and on average, spent more time on the Internet than they did reading newspapers. As shown below, *New York Times Digital* and Yahoo provide the most significant competition in the online delivery of local news and information and sale of advertising, and these and other websites aggregate content from hundreds, if not thousands, of local websites and bloggers. More than 50 websites reach more than 10,000 users in the DMA every month. Consumers now control their access to news, information and entertainment, and Tribune's Stations and newspaper are only a few of the hundreds of local outlets competing for their attention. The combination of the Stations and the *Courant* has had and will have no significant adverse impact on the diversity of viewpoints available in the market. Indeed, the reach of the Stations and the *Courant* — separately and in combination — has fallen during their common ownership.

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<sup>57</sup> See *Arnold L. Chase*, 6 FCC Rcd. at 7401.

<sup>58</sup> See *infra* at 30.

1. *Television Stations in the Hartford DMA.*

The abundance of television stations in the DMA alone supports a waiver permitting common ownership of the Stations and the *Courant*. WTIC, a Fox affiliate, and WTXX, a CW affiliate, are two of the 11 full-service television stations licensed to the Hartford DMA.<sup>59</sup> Of these 11 television stations, seven are owned by separate and independent broadcasters.<sup>60</sup> Tribune’s common ownership of the *Courant* and the Stations thus was permitted by the cross-media limits adopted in the *2003 Order*; the number of television stations in the DMA is at least two more than the nine the Commission required to permit the common ownership of a daily newspaper and a television station duopoly otherwise permitted under the FCC’s rules.<sup>61</sup>

**Full Service Television Stations – Hartford DMA**<sup>62</sup>

Source: Nielsen Household May 2006

Station	Owner	Network Affiliation	Channel	Rat	Sh
WFSB, Hartford	Meredith	CBS	3	5.4	13.5
WTNH-TV, New Haven	LIN Television Corporation	ABC	8	4.1	10.2
WCTX, New Haven	LIN Television Corporation	MyNetworkTV	59	0.6	1.5
WUVN, Hartford	Entravision Communications	Univision	18	0.5	1.2
WTXX, Waterbury	Tribune	CW	20	0.8	1.9
WTIC-TV, Hartford	Tribune	FOX	61	2.5	6.2
WHPX, New London	Ion	ION	26	0.1	0.3
WVIT, New Britain	NBC Universal	NBC	30	3.8	9.5
WEDN, Norwich	Connecticut Public B/casting	PBS	53	0.1	0.1
WEDH, Hartford	Connecticut Public B/casting	PBS	24	0.6	1.5
WEDY, New Haven	Connecticut Public B/casting	PBS	65	NA	NA

<sup>59</sup> Sources for television station counts include BROADCASTING & CABLE YEARBOOK 2007, BIA and FCC databases.

<sup>60</sup> Eight of these 11 television stations are commercial allocations, with six separate and independent owners. LIN Television also operates a duopoly in the Hartford DMA.

<sup>61</sup> See *2002 Biennial Review Order*, 18 FCC Rcd. at 13804.

<sup>62</sup> Ratings in this table and discussed below from Nielsen Household May 2006; Nielsen Research, May 2001; Nielsen Station Index, May 1975.

The ratings history of the television stations in the Hartford DMA confirms that the market has grown increasingly diverse and competitive since 1975, a trend that has continued since 2000, when Tribune acquired the *Courant*. For example:

- \* While in May 2006, the highest-rated television station in the market received a 13.5 share (WFSB) and only one other station (WTNH) earned better than a 10 share, five years ago, in May 2001, WFSB received a 14 share, WVIT received a 13 share, and WTNH received a 10 share.
- \* In 1975, when WFSB earned a 34 share, WTNH earned a 23 share, and WVIT earned a 15 share, no other television station in the market earned greater than a 1 share. Currently, six stations earn greater than a 1 share, compared to the three stations in 1975.
- \* In 1975, WTIC-TV was not yet on the air, and WTXX earned less than a 1 share. Today, with the common ownership under Tribune, the Stations have increased their share to a 6.2 and a 1.9, respectively, but have not come close separately or together to overtaking any of the three highest-rated stations in the market (WFSB, WVIT and WTNH), each of which has a 9.5 share or better.<sup>63</sup>
- \* As demonstrated in the BIA Fratrik Declaration, even with its common ownership with the *Courant*, the WTIC-WTXX duopoly ranks fourth in a competitive television broadcast advertising market. Meredith, NBC Universal, and LIN Television rank ahead of Tribune where in-market broadcast television station revenue shares range from 22% to 26.8% in the top 4 groups.<sup>64</sup>

Thus, even ignoring the multiplicity of viewing options that out-of-market broadcast stations and MVPD channels provide, viewers in the Hartford market have more options to choose from, and are choosing to take advantage of them.

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<sup>63</sup> The ratings history of the Stations also supports the grant of a waiver, because it shows that common ownership has not increased WTIC's reach, but that as promised, has stabilized WTXX's reach. For the May 2006 Nielsen ratings period, WTIC was the fourth-ranked station in the market, receiving a 2.9 rating and a 6.8 share in total household all-day ratings (Monday through Sunday, 9:00 a.m. to midnight); WTXX received a 0.9 rating and a 2.1 share. In May 2001, WTIC also was the fourth-ranked station, with a comparable 5.1 share; WTXX had a comparable 2 share in 2001. These ratings strongly suggest that the Stations do not have any cognizable market power over viewership, and that the combination with the *Courant* has not enabled them to adversely impact competition in the market.

<sup>64</sup> BIA Fratrik Declaration, ¶ 6 & Figure 2.

As the Commission has long recognized, however, the Hartford DMA “receives an unusually large amount of television signal penetration from television stations licensed to communities outside of the market.”<sup>65</sup> Stations available to residents of the Hartford DMA include:

- \* From New York, stations owned by the four major networks (WCBS-TV, WNBC-TV, WNYW-TV, WABC-TV, and WWOR), another commercial station (WPIX), and public television station WNET-TV.
- \* From Boston, two stations, network-affiliate WCVB-TV (ABC) and network-owned WBZ-TV (CBS), two other commercial stations, WSBK and WLVI, and public television station WGBH-TV.
- \* From Providence, a CBS affiliate (WPRI) and an NBC affiliate (WJAR-TV), along with a public television station (WSBE).
- \* From Springfield, an NBC affiliate (WWLP) and ABC affiliate (WGGB), along with a public television station (WGBY).<sup>66</sup>

The three Springfield stations (WWLP, WGGB and WGBY) place a city-grade coverage contour over the city of Hartford, and have received ratings in the Hartford DMA for many years.<sup>67</sup> The New York City stations (WCBS, WNBC, WNYW and WABC) place a Grade B contour between Bridgeport and New Haven.<sup>68</sup> At least two of the Boston stations (WCVB and WBZ) cover Willimantic with their Grade B contour, and the two commercial Providence stations (WPRI and WJAR) place a Grade B signal almost to Hartford, covering New London.<sup>69</sup> As early as 1991, the Commission held that at least 12 out-of-market television signals, including

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<sup>65</sup> *Arnold L. Chase*, 6 FCC Rcd. at 7401.

<sup>66</sup> *See 2006 Television & Cable Factbook*.

<sup>67</sup> *Id.*; *see Arnold L. Chase*, 6 FCC Rcd. at 7401 & n.32. The Grade B signal of WWLP reaches down to New Haven, and the Grade B signal of WGGB reaches down to Waterbury. *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

these 11, “have a significant presence in the Hartford/New Haven ADI,” and serve as a justification for a waiver of the Rule.<sup>70</sup>

The Commission also has long recognized that “the pervasive presence” of these significant out-of-market video signals is demonstrated by the percentage of “out-of-market viewing” versus “local viewing in the Hartford DMA.”<sup>71</sup> As an administrative law judge found in *Arnold L. Chase*, among the top 50 markets, the Hartford DMA long has had “the highest percentage of ‘other viewing’” in the United States.<sup>72</sup> In 1975, the six stations licensed to the market received just under a collective 75 share; as of 2001, the share of the in-market television stations had been reduced to just under 50; in 2006, that collective share has been reduced to less than 44, as viewers now watch both out-of-market television stations and cable channels.<sup>73</sup> As Dr. Fratrick reports, adjacent-market stations garnered nearly 10% of all of the viewing of broadcast television stations in March 2006.<sup>74</sup>

Finally, viewers in the Hartford market have access to significant amounts of local television news programming from other broadcasters. Tribune produces 11 hours of regularly-scheduled local news per week for broadcast on WTIC and WTXN, up from 6.5 hours

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<sup>70</sup> *Arnold L. Chase*, 6 FCC Rcd. at 7401. In 1991, the Commission waived the “one-to-a-market” rule, 47 C.F.R. § 73.3555(b), to permit the common ownership of WTIC-TV, and WTIC(AM) and WTIC(FM), two of the highest-rated radio stations in the Hartford metropolitan area. *Id.* at 7412-14. Hartford and Springfield are 25 miles apart.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* In 1991, only 66.8% of the market’s total daily viewing went to local television stations. *Id.*

<sup>73</sup> While not included in the traditional “voice” count, there are at least 10 low-power television stations licensed to the Hartford DMA, none of which is owned by Tribune or its affiliates. These include seven Hartford stations (WRNT, WHTX, WFXQ, WRDM, WHCT, WUTH, and WRNT) and WESA, Granby, WNHX, New Haven, and W12BH, Waterbury.

<sup>74</sup> BIA Fratrick Declaration, ¶ 8. This impact of out-of-market viewing will continue after the DTV transition because many of the adjacent market television stations have digital signal operations that extend farther into the Hartford DMA than their corresponding analog signals. *Id.* ¶ 9.

at the time Tribune acquired the *Courant*. At least four other television stations provide regularly-scheduled news programs, with three other separate television operators providing at least 30 hours or more per week of regularly-scheduled news programming.<sup>75</sup> Competition for the provision of television news is not adversely affected, but is enhanced, by the common ownership of the Stations and the *Courant*. In this market, station operators that are not part of broadcast groups that place a premium on supplying news programming simply could not afford to maintain independent news operations and regularly-scheduled news programming.<sup>76</sup> During the last five years, for example, stations WHPX and WRDM have ceased broadcasting independently-produced regularly-scheduled news programs. With the combined resources of Tribune, however, as detailed below, the Stations can produce an evening newscast that achieves a combined rating of 7.3, comparable to that of WFSB (7.9), WVIT (7.2) and WTNH/WCTX (combined 7.8).

2. *Impact of MVPDs in the Hartford DMA.*

The Hartford DMA is heavily served by MVPDs, including cable television systems and direct broadcast satellite systems, further increasing diversity and competition. Aggregate MVPD penetration is approximately 95%, with cable penetration over 82% and direct broadcast satellite penetration over 12%.<sup>77</sup> Very few television households obtain their video programming over the air; indeed, the Hartford DMA has traditionally had the first or second

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<sup>75</sup> The source for news program hours is the Hartford Nielsen Galaxy System, May & July 2006. The stations and their hours of news: WFSB (39 hours); WVIT (38.5 hours); and WTNH (31.5 hours)/WCTX (7.5 hours).

<sup>76</sup> See BIA Fratrik Declaration, ¶ 6.

<sup>77</sup> See Nielsen Market Data (July 2006), TVB Research Central, Market Track Data, Hartford DMA, found at [www.tvb.org/rcentral/markettrack/archivebymarket.asp](http://www.tvb.org/rcentral/markettrack/archivebymarket.asp).

highest cable penetration of any market in the top 50 markets.<sup>78</sup> MVPDs provide robust competition to broadcast stations, offering between 250 and 400 channels of programming, including news, information and entertainment.

**Top 40 Video Channels and Cable/Satellite Channel Ratings – Hartford DMA**<sup>79</sup>

Stations/Channels	Rat/Share	Stations/Channels	Rat/Share
WFSB (CBS – Meredith)	5.4 / 13.5	American Movie Classics (Cablevision)	0.5 / 1.2
WTNH (ABC – LIN Television)	4.1 / 10.2	ABC Family Channel (Disney)	0.5 / 1.2
WVIT (NBC – NBC Universal)	3.8 / 9.5	History Channel (Hearst/Disney/NBC Universal)	0.5 / 1.2
WTIC (FOX – Tribune)	2.5 / 6.2	Food Network (Scripps-Howard/Tribune)	0.5 / 1.2
USA Network (NBC Universal)	1.0 / 2.6	HGTV (Scripps Howard)	0.5 / 1.2
Disney Channel (Disney)	1.0 / 2.6	The Cartoon Network (Time Warner)	0.5 / 1.2
TNT (Time Warner)	1.0 / 2.5	The Travel Channel (Cox Cable)	0.4 / 1.1
New England Sports Network (Hearst)	0.9 / 2.3	Arts & Entertainment Network (Hearst/Dis/NBC)	0.4 / 1.0
Nickelodeon (Viacom)	0.9 / 2.3	Spike TV (Viacom)	0.4 / 1.0
Fox News Channel (Fox – News Corp.)	0.8 / 2.0	The Hallmark Network	0.4 / 1.0
Lifetime (Hearst/Disney)	0.8 / 1.9	MTV (Viacom)	0.4 / 0.9
TBS (Time Warner)	0.8 / 1.9	SciFi Channel (NBC Universal)	0.4 / 0.9
WTXX (CW - Tribune)	0.8 / 1.9	Animal Planet Channel (Liberty Media/Cox)	0.4 / 0.9
Yes Network	0.7 / 1.9	The Comedy Channel (Viacom)	0.4 / 0.9
WCTX (MyNetworkTV – LIN Television)	0.6 / 1.5	The Learning Channel (Liberty Media/Cox)	0.3 / 0.8
WEDH (Connecticut Public Broadcasting)	0.6 / 1.5	TCM (Time Warner)	0.3 / 0.8
CNN (Time Warner)	0.6 / 1.4	Entertainment Networkk (E! Entertainment)	0.3 / 0.7
ESPN (Disney/Hearst)	0.5 / 1.4	The Wrestling Channel (Time Warner)	0.3 / 0.7
FX (Fox – News Corp.)	0.5 / 1.4	VH1 (Viacom)	0.3 / 0.7
WUVN (Entravision)	0.5 / 1.2	BET Network	0.3 / 0.7

As the table reveals, the high MVPD penetration gives viewers in the Hartford DMA an abundant number of program choices and viewing is spread amongst the choices. For example:

<sup>78</sup> See *id.*; *Arnold L. Chase*, 6 FCC Rcd. at 7401.

<sup>79</sup> As with television station ratings, the source for ratings is Nielsen LPM Household May 2006.

- \* while eight over-the-air television stations in the market receive at least a 1 share, 22 cable networks also garner at least a 1 share.
- \* In May 2006, eight cable channels received ratings higher than WTXX, and six cable channels made the top 10 channels viewed in the market, earning a 2 share or better.
- \* In addition to the nine cable networks in the top 15, three other cable channels also make the top 20, earning a 1.4 share or better.
- \* Of the top 20 video channels in the Hartford DMA, five are cable channels that provide news or sports programming, much of it local in the market.<sup>80</sup>
- \* Among the top 50 video channels are the four major network stations from New York (WNBC, WABC, WCBS and WNYW), which collectively have a 2.2 share.

Cable and satellite clearly provide alternative sources of news, information and entertainment in the Hartford DMA, with viewership in many instances comparable to that of their broadcast competitors. The diversity of viewpoint and programming options reflected in the television broadcast market is increased significantly by the MPVD penetration in the market, and the viewing options MVPDs and out-of-market television stations provide. At the same time, as local ratings demonstrate, MVPDs have lessened the market shares of local broadcast voices, individually and collectively.

### 3. *Newspapers Published in the Hartford DMA.*

The availability of daily news in print in the Hartford area is no less vast than the amount of television news. There are at least 12 daily newspapers published and distributed in the Hartford DMA, with at least eight published by separate and distinct owners. While the *Courant* is the most widely circulated daily newspaper in the market with a weekday circulation in excess of 184,000, the Journal Register Company publishes at least five daily newspapers in

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<sup>80</sup> These news and sports channels include the New England Sports Network, the Fox News Channel, the Yes Network, CNN, and ESPN.

the DMA with a combined circulation of just over 122,000, including the *New Haven Register*, with a circulation of 84,536. Four other publishers, including Gannett, Day Publishing, American-Republican and Journal Inquirer, publish dailies in the Hartford DMA with circulations in excess of 40,000.<sup>81</sup>

**Daily Newspapers – Greater Hartford Area (DMA)**<sup>82</sup>

<b>Newspaper</b>	<b>Publisher</b>	<b>Community</b>	<b>Daily Circulation</b>
<i>Republican-American</i>	American-Republican, Inc.	Waterbury	61,100
<i>The Chronicle</i>	Chronicle Printing Co.	Willimantic	8,940
<i>The Day</i>	The Day Publishing Co.	New London	43,442
<i>Norwich Bulletin</i>	Gannett Co.	Norwich	54,900
<i>Journal Inquirer</i>	Journal Inquirer Inc.	Manchester	40,216
<i>The Bristol Press</i>	Journal Register Co.	Bristol	10,038
<i>New Haven Register</i>	Journal Register Co.	New Haven	84,546
<i>The Herald</i>	Journal Register Co.	New Britain	12,115
<i>The Register Citizen</i>	Journal Register Co.	Torrington	7,720
<i>The Middletown Press</i>	Journal Register Co.	Middletown	7,621
<i>Record-Journal</i>	Record-Journal Publishing	Meriden-Wallingford	22,800
<i>Hartford Courant</i>	Tribune Co.	Hartford	184,254

While the *Courant* has the most significant circulation, it does not dominate its competitors, either alone or in combination with the Stations.<sup>83</sup> Since the Times Mirror merger, the circulation of the *Courant*, like that of many other daily newspapers, has decreased. From

<sup>81</sup> As the ALJ found in *Arnold L. Chase*, five daily newspapers, each separately owned and operated, are published in Hartford County. *Arnold L. Chase*, 6 FCC Rcd. at 7402.

<sup>82</sup> Additionally, the *Connecticut Post*, published by MediaNews Group in Bridgeport, has a circulation of 77,469, with much of it in the Hartford DMA or otherwise within the Grade B contour of the Stations. The sources for the daily and weekly newspapers and their circulations include BIA, FasFax 2006, the SRDS Database, and The Center for Public Integrity’s Media Ownership Summary.

<sup>83</sup> The competition and diversity shown in the number of local publishers is matched by the abundance of national daily newspapers serving the greater Hartford area. These daily newspapers consist of papers of local interest, including *The New York Times*, *The Boston Globe* and *The Wall Street Journal*, as well as *USA Today*, the *Washington Post*, the *Washington Times*, the *Financial Times*, *Investor’s Business Daily*, and the *Christian Science Monitor*.

September 2001 to May 2006 (a span of less than five years), the daily circulation of the *Courant* fell more than 7% from 198,651 to 184,254; this is a rate faster than the circulation declines of some of its larger competitors, including the *Connecticut Post* published in Bridgeport.<sup>84</sup>

In addition to the daily newspapers, at least 63 weekly newspapers are published and distributed within the Hartford DMA by 15 different publishers.<sup>85</sup> The Commission has recognized that local weekly publications can add measurably to the diversity of viewpoints in a market, and the weekly publications in Hartford prove this point. Among these weekly publications are:

- \* More than 35 community weeklies published by The Journal Register Company, covering nearly the entire state of Connecticut.
- \* Five *Inquirer* weeklies published in Hartford, New Haven, Bridgeport, Waterbury and Springfield by William Hales.
- \* Several Hometown Publishing weeklies, including the *Easton Courier* and *Fairfield Today*.
- \* Five Shore Publishing weekly newspapers that circulate to between 5,000 and 170,000 readers in New Haven and surrounding communities.<sup>86</sup>

These weekly papers serve a diverse array of communities and special interests throughout the market, with many of them published in Hartford and New Haven.

#### 4. *AM, FM and Satellite Radio Service in the Hartford DMA.*

There are 76 radio stations serving the Hartford DMA, with 44 separate owners; within the FCC's defined Hartford radio market there are 34 stations with 22 separate owners.<sup>87</sup>

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<sup>84</sup> The *Connecticut Post* has maintained a circulation between 76,000 and 77,000 over the past five years.

<sup>85</sup> Attachment 2 contains a list of weekly publications in the DMA.

<sup>86</sup> In addition, approximately 12 local magazines are published and distributed in the greater Hartford area. These magazines include *Hartford Magazine*, *Connecticut Magazine*, *Corporate Connecticut*, *Milford Living*, and other publications distributed by Shore Communications and Moffly Publications.

Of the 76 stations in the DMA, 20 English-language stations operated by 12 different broadcasters have formats that focus on news, talk, sports, information, education and religion. Five stations, all operated by different broadcasters, are identified with Hispanic or ethnic formats. Some 50 stations operated by 26 different broadcasters are identified with music formats, and one station has a children’s format. In addition to these outlets, both XM and Sirius offer subscription satellite radio programming in Hartford, with XM offering 149 channels and Sirius offering 117 channels of seemingly endless format and variety.<sup>88</sup>

**Radio Stations in the Hartford DMA**

<b>Station</b>	<b>Owner</b>	<b>Format</b>	<b>Station</b>	<b>Owner</b>	<b>Format</b>
WDZK(AM)	ABC/Disney	Children	WKND(AM)	Freedom Communications CT	AC
WFIF(AM)	Blount Communications Group	Christian	WLAT(AM)	Freedom Communications CT	Tropical
WERB(FM)	Berlin Board of Education	Educ	WNEZ(AM)	Freedom Communications CT	Prpcl/Spanish
WDRC(AM)	Buckley Broadcasting Corp.	News/Talk	WCTY(FM)	Hall Communications	Country
WDRC(FM)	Buckley Broadcasting Corp.	Classic Hits	WICH(AM)	Hall Communications	Adlt Standard
WMMW(AM)	Buckley Broadcasting Corp.	News/Talk	WILI(AM)	Hall Communications	AC
WSNG(AM)	Buckley Broadcasting Corp.	News/Talk	WILI(FM)	Hall Communications	CHR
WWCO(AM)	Buckley Broadcasting Corp.	News/Talk	WKNL(FM)	Hall Communications	Oldies
WFNW(AM)	Candido Carrelo	Spanish/Trpcl	WNLC(FM)	Hall Communications	Classic Hits
WRCH(FM)	CBS Radio	Soft AC	WQTQ(FM)	Hartford Board of Education	Urban CHR
WTIC(AM)	CBS Radio	News/Talk	WQQQ(FM)	Dennis Jackson	Full Svc/AC
WTIC(FM)	CBS Radio	Modern AC	WZBG(FM)	Local Girls & Boys	AC
WZMX(FM)	CBS Radio	Hip Hop	WCCC(FM)	Marlin Broadcasting	Rock
WFCS(FM)	Central Conn. State University	Variety	WTMI(AM)	Marlin Broadcasting	Classical
WWEB(FM)	Choate Rosemary Hall Foundation	CHR	WGRS(FM)	Monroe Board of Education	Classical
WQGN(FM)	Citadel Communications	CHR	WGSK(FM)	Monroe Board of Education	Classical
WSUB(AM)	Citadel Communications	News/Talk	WPRX(AM)	Nieves Quez Productions	Tropical
WXLM(FM)	Citadel Communications	News/Talk	WINY(AM)	Osbre Broadcasting Co.	AC
WAVZ(AM)	Clear Channel Communications	Talk	WBVC(FM)	Pomfret School	Variety
WELI(AM)	Clear Channel Communications	News/Talk	WQAQ(FM)	Quinnipiac University	Alternative
WHCN(FM)	Clear Channel Communications	CHits/Rock/AC	WQUN(FM)	Quinnipiac University	News/Nstlg
WKCI(FM)	Clear Channel Communications	CHR/Top 40	WADS(AM)	Radio Amor Inc.	Span/CCTmp

<sup>87</sup> Radio station counts and data have been supplied from the BIA database.

<sup>88</sup> Attached as Appendix 2 are the program offerings for XM and Sirius.

Station	Owner	Format	Station	Owner	Format
WKSS(FM)	Clear Channel Communications	Top 40	WBMW(FM)	Red Wolf Broadcasting	AC
WPHH(FM)	Clear Channel Communications	Hip Hop/RhBlus	WWRX(FM)	Red Wolf Broadcasting	Rhym/Top 40
WPKX(FM)	Clear Channel Communications	Country	WSGG(FM)	Sam Girona Ministries	Span/CCtmp
WPOP(AM)	Clear Channel Communications	Sports	WJMJ(FM)	St. Thomas Seminary of Hartford	Classical
WWYZ(FM)	Clear Channel Communications	Country	WAPJ(FM)	The Tempkin Foundation	Info/Educ
WCNI(FM)	Connecticut College Community	Variety	WRTC(FM)	Trinity College	Variety
WNPR(FM)	Connecticut Public Broadcasting	Variety	WHUS(FM)	Univ. of Connecticut	Variety
WPKT(FM)	Connecticut Public Broadcasting	Variety	WWUH(FM)	University of Hartford	Variety
WPLR(FM)	Cox Radio	AOR	WNHU(FM)	University of New Haven	Alternative/Ecltc
WLIS(AM)	Crossroads Communications	Talk/News	WATR(AM)	WATR Inc.	Talk/AC
WMRD(AM)	Crossroads Communications	Talk/News	WDJW(FM)	WDJW Somers High School	Variety
WIHS(FM)	CT Radio Fellowship	Christian	WESU(FM)	Weslyan University	Var/HpHp/Rock
WXCT(AM)	Davidson Media Group	Talk	WKZE(AM)	WillPower Radio LLC	AAA
WECS(AM)	Eastern Connecticut State College	Variety	WKZE(FM)	WillPower Radio LLC	AAA
WRYM(AM)	Eight Forty Broadcasting Corp.	Spanish/Trpicl	WYBC(AM)	Yale Broadcasting Company	Urban AC
WCTF(AM)	Family Stations	Religion	WYBC(FM)	Yale Broadcasting Company	Variety

Additionally, the Hartford metropolitan area is penetrated by at least seven radio stations from Worcester, Springfield, New York City, and Westerly, Rhode Island.<sup>89</sup>

#### 5. *The Internet and Its Impact on the Local Market*

In recent years, high-speed Internet access in the United States has skyrocketed, fundamentally changing the way Americans receive news and information. In 2002, the Commission readily acknowledged the “important role [of the Internet] in the available media mix” as “a commonly-used source for news, commentary, community affairs, and national/international information.”<sup>90</sup> Today, the prevalence of the Internet as a primary source of news and public affairs information is unmistakable. As of August 2005, North American

<sup>89</sup> *Arnold L. Chase*, 6 FCC Rcd. at 7402. These stations include WAAF(FM), Worcester; WAQY(FM), Springfield; WHYN(FM), Springfield; WMAS(FM), Springfield; WWRX, Westerly; and WCBS and WFAN, New York City. *Id.*

<sup>90</sup> *2003 Order*, 18 FCC Rcd. at 13765-66.

consumers spent more hours each week using the Internet (5.9 hours) than reading newspapers (3.4 hours).<sup>91</sup> And although home broadband subscribers spend more time watching local and national television and listening to the radio, they still rely on online news sources more than their local newspaper.<sup>92</sup>

These trends will continue as consumers purchase high-speed Internet access. According to the Pew Internet & American Life Project, home broadband adoption increased by 40 percent from 60 million Americans in March 2005 to 84 million Americans in March 2006.<sup>93</sup> Indeed, approximately one-quarter of the growth of daily online news consumption since 2002 can be attributed to the rise in residential broadband adoption.<sup>94</sup> Today's Internet users have a multitude of online news sources from which to receive a diversity of information and commentary, not only including local daily newspaper, television station, and radio news sites, but also national television news sites from CNN and MSNBC with local pages, portals and aggregators such as Google and Yahoo, international news sites such as BBC, local news blogs, alternative news sites such as Altnet or Newsmax, and news listservs.<sup>95</sup> Users' ability to control the amount and type of content they receive, as well as the method through which they receive it (for example, PDA or mobile phone alert, podcast, or streaming video file), will continue to fuel the popularity of online news sources over traditional print and broadcast media.

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<sup>91</sup> Forrester Research, August 2005; ClickZ, August 2005.

<sup>92</sup> John B. Horrigan, Associate Director for Research, Pew Internet & American Life Project, Online News, at ii (Mar. 22, 2006) ("Online News").

<sup>93</sup> John B. Horrigan, Associate Director for Research, Pew Internet & American Life Project, Home Broadband Adoption 2006, at i (May 28, 2006) ("Home Broadband Adoption 2006").

<sup>94</sup> Online News at 4.

<sup>95</sup> *Id.* at 10-12.

Internet usage in the Hartford market reflects national trends showing increasing adoption and use. In Hartford, more than 70% of the population in the DMA have access to the Internet.<sup>96</sup> Approximately 71% of Hartford online users have a residential broadband connection, well above the national average of 61.6%.<sup>97</sup> In Hartford, websites owned and operated by Google, Yahoo, and Microsoft lead audience measurement metrics, with their reach, number of pages viewed and used, and average usage days per month exceeding those of websites from traditional broadcasters and newspapers. The content available on these websites includes not only national news and information, but local news and issues as well, because they each have “local portals” (akin to local editions) offering news, information and entertainment pertaining to the locality. Local portals, by design, compete head-to-head with local newspapers and cater to younger consumers who tend to access news content online rather than via traditional media (such as newspapers, television and radio) more readily and frequently than older consumers.

For example, as reflected in the Table below, in March 2006 in the Hartford market, new Internet media companies led the way:

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<sup>96</sup> Scarborough Research, February 2005 – January 2006.

<sup>97</sup> Nielsen/NetRatings, @Plan, Summer 2006 release.

**Websites and Key Comparative Statistics with Internet Leaders in Hartford**<sup>98</sup>

Website	Average Reach (Percent)	Average Pages Viewed	Average Pages Per Usage Day	Average Usage Days
Yahoo.com	82.8	511	27.4	14.8
Google.com	67.6	104	11.1	9.0
AOL.com	55.0	93	12.8	8.7
MSN.com	50.9	111	16.4	8.8
EBAY.com	44.8	84	24.7	5.0
Microsoft.com	38.9	8	6.0	2.2
Mapquest.com	38.8	14	9.0	2.6
Amazon.com	31.7	29	19.0	3.1
Courant.com	15.0	4	5.2	3.3

- \* For September 2006, Yahoo.com had a reach of 82.8%, Google.com had a reach of 67.6%, AOL.com had a reach of 55% and MSN.com a reach of 50.9%; each of these websites reach thus was more than three to five times the reach of Tribune’s *Courant*, which had a reach of 15%.
- \* While the *Courant* had an average of 4 pages viewed and 5.2 average pages per usage day, Yahoo had averages of 511 pages viewed and 27.4 average pages per usage day.
- \* The *Courant* ranked 22nd with respect to website reach in September 2006, an improvement of 4 spots from its rank of 26<sup>th</sup> in September 2005. State.CT.US (24%), About.com (21.6%), CNN.com (16.2%), and Weather.com (20.4%) all still are more frequently reached websites.

In addition to providing original content, the top-ranked websites also serve as aggregators of news. They direct users to stories and content of interest on other websites, thereby allowing consumers to choose the source of information that best meets their needs and interests.

When limited to solely “news/information” websites, sites owned by The New York Times, Yahoo! News, MSNBC and AOL News all have strong presences in the online market in Hartford in 2006. While many websites produced by traditional media outlets have

<sup>98</sup> The source for Internet data is MyMetrix, 2006 comScore Networks, Inc., September 2006. Courant.com is ranked 22nd and provided for comparison purposes.

grown in popularity since 2001, including websites operated by Tribune, Internet usage in 2006

for only “News/Information” reflects vibrant competition in the DMA. For example:

- \* AOL News, Yahoo!News and MSNBC are still among the 8 most accessed websites in the market, but approximately 50 websites reach 1% or more of the market.<sup>99</sup>
- \* Today, *New York Times Digital* has the greatest reach in the market, with 28.6% of all Internet users. More than 436,000 million unique visitors access *New York Times Digital’s* website, more than any other website in the market.
- \* AOL News reaches 14.4% of Internet users, MSNBC.com reaches 17.7% of all Internet users, and Yahoo! News reaches 27.3% of all Internet users, the second-highest of any website. On a monthly basis, these three sites each reach between 219,000 and 416,000 million unique visitors.
- \* Tribune’s reach in the market, as of March 2006, was 20%, with just over 300,000 million unique visitors per month.
- \* Fifty-two website operators reach more than 10,000 users in the Hartford DMA, including websites operated by independent and non-traditional online service providers like Internet Broadcasting, Slate.com, military.com, and wunderground.com. Fox, CBS and NBC also have affiliated websites that reach more than 40,000 users in Hartford.

While some of these news websites are affiliated with traditional newspapers and broadcast stations, countless independent websites carry reports, commentary and information that compete with the more traditional outlets. Indeed, many websites have video streaming capability to convey these materials. These national and local websites not only include the powerhouses identified above, but also include national and local sites:

The Weather Channel	Topix.net	MediaPost.com
WorldNow.com	NPR.org	InqNews.com
CNN.com	Court TV Online	Xenarts.com
Bargainnews.com	Time.com	The Chronicle.com
Legacy.com	USNews.com	Simsburyct.us
NHregister.com	Post-Gazette Network	ArtTrail.org

<sup>99</sup> Reach data based upon Media Metrix data for March 2006.

USAToday.com	The Sun Online	Avonct.us
ABC News Digital	Geocities.com	Uconnhuskies.org
Myweather.net	CT.gov	Conntact.com
TheDay.com	Uconn.edu	Chiroweb.com
CBS News Digital	CTNow.com	Harbornews.shorepublishing.com
Discovery.com	Send2Press.com	Ctseek.com
Netscape What's New	Harthosp.org	Naugatuckonline.com
FoxNews.Com	Hartford.gov	Kids.state.ct.us.
Ottaway Newspapers	Environmental-justice.org	Wickhampark.org
Accuweather.com	State.ct.us	HavenWorks.com
WashingtonPost.com	Brama.com	Tcextra.com
NYDailyNews.com	News.Thomasnet.com	Lymeline.com
NYPost.com	Examiner.com	Einnews.com

Search engines provide fingertip access to these websites and thousands of additional websites created by governmental, cultural, sports, religious, educational and other organizations providing news and information that cover all areas of interest to consumers.

Finally, many websites allow visitors to provide comments or engage in debate on an endless number of local topics through email, chat rooms, discussion boards, and blogs.

There are at least 35 Hartford blog websites on the Internet.<sup>100</sup> In short, the Internet provides a strong source of competition for the eyes and intellects of television viewers and newspaper

<sup>100</sup> These blogsites include Connecticut Citizens in Action, <http://ct-cia.blogspot.com>; Connecticut Commentary, <http://donpesci.blogspot.com>; Connecticut Conservative, [www.ctconservative.blogspot.com](http://www.ctconservative.blogspot.com); Connecticut Fishing blog, <http://ctfishing.blogspot.com>; Family Institute of CY, [www.ctfamily.org/Crosshairs.html](http://www.ctfamily.org/Crosshairs.html); Connecticut Local Politics, <http://connecticutlocalpolitics.blogspot.com>; Connecticut Windows on the Natural World, <http://cttrips.blogspot.com>; Connecticut BLOG, <http://connecticut.blogs.blogspot.com>; CT News Junkie, <http://ctnewsjunkie.com>; Gordon Joseloff, <http://gordonjoseloff.com>; Greg's Connecticut Defenders blog, <http://gregsconnecticutdefenders.blogspot.com>; iCONN News, <http://iconnoutreach.blogspot.com>; In Connecticut's Woodlands, <http://ctwoodlands.blogspot.com>; Pray Connecticut, <http://prayconnecticut.blogspot.com>; Right Talk CT, <http://gopct.blogspot.com>; Save Connecticut, [www.saveconnecticut.org](http://www.saveconnecticut.org); The West Hartford Blog, <http://whdad.wordpress.com>; Southington Live, <http://southingtonlive.blogspot.com>; Connecticut Law Blog, [www.connecticutlaw.blogspot.com](http://www.connecticutlaw.blogspot.com); This is CT, [www.thisisct.net/blog.html](http://www.thisisct.net/blog.html); Building CT Green, [www.buildingctgreen.com](http://www.buildingctgreen.com); Radio Free West Hartford, [www.radiofreewesthartford.com](http://www.radiofreewesthartford.com); Bill Finch Blog, [www.billfinch.org](http://www.billfinch.org); Connecticut Young Democrats, <http://blog.dems.info>; Hartford Blog, [www.hellohartford.com](http://www.hellohartford.com).

readers. It provides instantaneous links, generally at no charge, to constantly growing sources of news, opinion and entertainment, and exponentially increases the diversity of viewpoints in the Hartford market.

**D. Public Interest Benefits Result from Tribune's Ownership of the Stations and the *Courant*.**

As noted above, despite facing significant competition from more powerful traditional broadcast news operations in the Hartford DMA, the Stations have expanded their regularly-scheduled local news programming from 10 hours per week to 16 hours per week during the period of common ownership of the Stations and the *Courant*. Over the past six years, joint efforts between the Stations and the *Courant* measurably have improved the Station's ability to cover news and contribute to its community. The combination provides programming and public interest benefits that no television station on its own could otherwise offer. These benefits flow directly to the public, and would have been difficult if not impossible to attain absent common ownership and Tribune's firm commitment to bringing news and public affairs programming benefits to the public.

The history of WTIC and WTXX, and the other news operations in the market, make clear that Tribune's common ownership makes the quality news operation at the Stations possible. Until 1988, only three television stations in the market (network-affiliates WFCB, WTNH, and WVIT) provided local evening news programs in the Hartford DMA.<sup>101</sup> During the 1980s, Arnold Chase, the initial indirect owner of WTIC, placed the station on the air and attempted to establish the station in the market, but had been unable to secure its financial future,

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<sup>101</sup> *Arnold L. Chase*, 6 FCC Rcd. at 7402.

much less establish any news operations at the station, given the competitive position of the station in the market.<sup>102</sup> As a result, Arnold Chase and his family sought FCC consent to the Chase family's consolidation of the ownership of WTIC and several radio stations, requesting a waiver of the "one-to-a-market" rule to permit that common ownership; in seeking the waiver, the Chase family "stated that the joint ownership of Station WTIC-TV" and the radio stations "would permit Station WTIC-TV to initiate the only 10:00 p.m. newscast" available in the market.<sup>103</sup> Based on the diversity of media outlets in the market and the promise of a new newscast, the Commission permitted the common ownership.<sup>104</sup>

The Chase family combined the television and radio station operations, and began a half-hour 10:00 p.m. weekday newscast in 1989, extending the half-hour newscast to weekends in 1991.<sup>105</sup> Several years later, the Chase family sold WTIC to Renaissance, which then sold its television properties, including WTIC, to Tribune in 1997.<sup>106</sup> As part of that transaction, Tribune inherited a contractual relationship with WTXX, a station that had never broadcast news programming.<sup>107</sup> As is a matter of record at the Commission, Tribune and its broadcast stations are committed to maintaining the highest standards of news and public affairs programming. Since Tribune acquired WTIC, then the *Courant*, and finally WTXX, it has increased the quantity and enhanced the quality of news and public affairs programming on the Stations which

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<sup>102</sup> *Id.* at 7396-97.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*; see also *Arnold L. Chase*, 61 R.R.2d 111, 135 (1986).

<sup>105</sup> *Arnold L. Chase*, 6 FCC Rcd. at 7402.

<sup>106</sup> See *supra* at 9.

<sup>107</sup> *Counterpoint I*, 16 FCC Rcd. at 15044-47.

the Commission recognized from the beginning required and warranted relief from the Commission's cross-ownership rules in Section 73.3555.<sup>108</sup>

As the Commission has recognized in its prior orders, Tribune has succeeded in providing the public with enhanced news specials, news coverage, public affairs programs, and public interest services as a result of the combination.<sup>109</sup> The grant of a temporary waiver of the Rule to permit continued common ownership will allow Tribune to continue to develop and present quality news and public affairs programs for the greater Hartford area. As discussed below, the combined resources of Tribune benefit, and do not harm, access to quality news and public affairs programming in the Hartford DMA.

***Regularly-Scheduled Newscasts.*** Tribune has expanded WTIC's original half-hour news program to one hour, and broadcasts the newscast at 10:00-11:00 p.m. and 4:00-5:00 a.m. every weekday. Tribune also broadcasts a half-hour newscast beginning at 10:00 p.m. every Saturday and Sunday. During the past five years, Tribune has broadcast the newscast on WTXX in different ways, to provide the public in the DMA with different options. For example, the Stations have broadcast a half-hour version of its full hour WTIC newscast at 10:00 p.m. on WTXX, simulcasting the first 20 minutes of the WTIC newscast, and concluding the WTXX newscast with 10 minutes of early sports and weather (for those who wish to finish their news viewing by 10:30 p.m.). The Stations currently simulcast the full hour of the newscast, but "time

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<sup>108</sup> *Arnold L. Chase*, 61 R.R.2d at 135; *Arnold L. Chase*, 16 FCC Rcd. at 7413.

<sup>109</sup> *See Counterpoint III*, 20 FCC Rcd. at 8588-89. As detailed below, Tribune has maintained and expanded the programs recognized in *Counterpoint III*. The one-hour newscast has benefited from the dedication of specific resources to Waterbury, WTXX's community of license. The student news program has been expanded, with spots airing more frequently. Catholic mass has been continued, and offered several times during the morning. A sports program similar to "Beyond the Headlines" also is broadcast.

shift” the newscast when Fox programming extends into the regularly-scheduled news hour. For example, during baseball playoffs in the fall of 2006, WTXS carried the full hour newscast at 10:00 p.m., while the baseball games extended into the regular news hour on WTIC. The Stations used crawls to inform the public of the availability and timing of the newscast.<sup>110</sup>

The Stations use the resources of the *Courant* to make the presentation of a quality newscast possible, as is required to compete with the three well-established network-affiliated newscasts in the market. For example:

- \* The News Director of the Stations meets regularly (usually weekly) with a managing editor of the *Courant* to identify issues and areas of coverage at the *Courant* which the Stations do not have resources to cover, but can be presented to the public on the Stations through use of *Courant* reporters.<sup>111</sup>
- \* The *Courant*'s experts on politics, education, crime and violence are regularly made available to the Stations news producers to be interviewed on the newscast (and the Station's other public affairs programs). For example, the Stations will use *Courant* columnist Stan Simpson, business columnist Dan Hahr, or political columnist Chris Keating to provide expert insights. During newscast coverage of gasoline and oil price changes, or election issues, the Station thus had access to experts who cover these issues on a daily basis – a resource that would not otherwise be available for coverage on the Stations' newscasts.<sup>112</sup>
- \* The Stations have access to David Lightman, the *Courant*'s Washington Bureau Chief, and the other national and international correspondents of the *Courant* and Tribune. In addition to the expertise available from these recognized experts, including Tribune's Grant Rampy who appears regularly on the newscasts, the

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<sup>110</sup> As another example, when the Stations are covering University of Connecticut basketball games on one station, they can broadcast their newscast at its regularly scheduled time on the other station.

<sup>111</sup> Even though the news director and managing editor meet to discuss issues and resources, editorial content on the Stations and the newspaper is determined separately by each media entity. Moreover, although the *Courant* presents editorials, the Stations do not editorialize.

<sup>112</sup> In addition to the production of these full-and half-hour newscasts, the Stations produce four newsbreaks each day, using and promoting stories that are independently produced by the Stations. Nevertheless, the newsbreaks can often rely upon or include stories and material supplied by *Courant* reporters.

Stations have access to the newsgathering and distribution facilities of the Washington Bureau.

- \* The Stations for three years produced a weekly entertainment guide for the newscast using Ellen Burns, a *Courant* entertainment reporter.
- \* The *Courant* provides photographs for news reports, including photographs of crime suspects and police and fire-fighters responding to accident scenes, enhancing the newscasts on the Stations.

The regularly-scheduled newscasts also are able to use *Courant* reporters and their extensive investigative efforts to provide news stories that otherwise would not be able to receive detailed coverage on the Stations. For example:

- \* In February of 2004, the Stations worked with *Courant* reporters that were following two Department of Children and Families case-workers to investigate in-home placement of foster children.
- \* In early 2006, the Stations worked with *Courant* reporters to produce a series on their investigation of soldiers with emotional and mental illnesses that were heavily medicated and sent back to service.
- \* During the Summer of 2006, the Stations worked with a *Courant* crew that was embedded with a unit of soldiers serving in Iraq and were able to interview soldiers from the Hartford area to discuss their service and maintaining communication with their families at home.

Given the limited resources of the Stations, none of these stories would have been possible without the use of *Courant* reporters, photographers and resources. In addition to these synergies, the Stations specifically have established a Waterbury Bureau to ensure that the newscasts (and public affairs programming) on the Stations cover issues that are important to Waterbury, WTXN's community of license. For example, during the Summer of 2005, Sarah Cody, a reporter staffing the bureau, provided coverage of a story surrounding a local trucking company and the maintenance of brakes on its trucks that were related to the killing of four residents at an intersection in Avon.

***News, Sports, and Public Affairs Programs.*** In addition to regularly-scheduled newscasts, the Stations provide regularly-scheduled public affairs and sports programs that would not be possible without the use of *Courant* expert reporters.

***“Beyond the Headlines.”*** The Stations currently maintain a weekly news and public affairs show, “Beyond the Headlines,” that was pioneered by Tribune for WTXX using the combined resources of the Stations and the *Courant*. The half-hour show generally consists of three segments each week, usually addressing the most pressing local issues involving politics, education, crime and violence or economics. The show has been co-hosted by a news reporter from the Stations and a *Courant* reporter, and has regular weekly panelists that include expert *Courant* reporters. These participants have included Stan Simpson as a regular contributor, as well as Dan Hahr (business), and Chris Keating (politics). This show now is broadcast on WTIC at 8:00-8:30 a.m. on Sunday mornings, and is aired several additional times later on WTXX for individuals who cannot catch the 8:00 a.m. telecast.

***“Beyond the Highlights.”*** Regularly aired at 10:30 p.m. on Sundays, the Stations broadcast a half-hour local sports show that includes columnists and beat-writers from the *Courant*. These writers often can add insights to the sportscasts because, unlike the sports personnel at the Stations, they cover specific local teams and other teams of interest on a daily basis. For example, during the coverage of the death of Corey Lidle as the result of his crash of an aircraft in New York City, the Stations were able to rely on a beat-writer for the Mets and Yankees (who had spent time with Corey Lidle) to enhance the report on the incident.

***News and Public Affairs Specials.*** The synergies afforded to the Stations by their access to *Courant* resources also allows the broadcast of special events. For example:

- \* The Stations' news director and crew, using *Courant* reporters as hosts, moderators and questioners, have structured and broadcast a debate between candidates during the last two political election campaign cycles.
- \* The Stations also have broadcast, using a former political reporter, 2 to 3 minute segments that test the veracity of local political ads.
- \* The Stations and *Courant* reporters provided on-the-spot coverage of "Sailfest," a local event involving a large parade of sailboats in Connecticut.
- \* The Stations rely periodically on beat reporters covering the University of Connecticut basketball teams to produce special coverage of the men's and women's teams during tournaments and other games of interest, including 12 to 20 sports specials per year.

In addition to these special programs, the Stations have the ability to provide cut-ins for special weather reports using *Courant* weather experts, and have been able to access the Tribune's reporters and feeds for special news coverage during national emergencies, including September 11th and Hurricane Katrina.

***Special Programs and Services To The Community.*** In conjunction with the *Courant*, the Stations have developed a number of special programs that foster education, health, and care for children in the greater Hartford community. Absent the combination of the resources of the Stations and the *Courant*, these programs either would not exist, or would be far less extensive and effective.

"*Student News.*" With the help of the *Courant*, the Stations produce, promote and sponsor "Student News," a program that educates high school and middle school children about the production and writing of news, and encourages them to write and produce their own stories. Each year the Stations conduct a workshop partly sponsored by the *Courant* for Connecticut's teachers that covers the basics of newswriting and production, and provides details on how to work with students in producing their own news stories. Both the *Courant* and the

Stations promote the project through published advertisements and broadcasts. The *Courant* specifically sponsors contests for best writing and production on current affairs, while the Stations provide guidance to the schools for the production of one minute news stories that can be aired on the Stations. To date, approximately 250 schools have participated in the program, which culminates with Station and *Courant* personnel providing feedback and evaluation of the submissions. Winning entries are broadcast on the Stations, with approximately 35 to 40 stories broadcast on a weekly rotation on WTIC and WTXN. Stories are also made available on the websites of the Tribune properties. The Stations and the *Courant* also sponsor an awards ceremony, and scholarships to college are provided as part of the program.

“*Public Service Announcements.*” The Stations and the *Courant* also produce public service programs and services in the community. These programs include:

- \* Holiday Campaign Family Funds, which through publication of ads in the *Courant* and PSAs on the Stations supports children’s groups, including basic needs and education, including more than \$100,000 in collective grants since 2003.
- \* FOX 61 Family Fund, promoted by the Stations, the *Courant* and the McCormick Tribune Foundation, which has resulted in the distribution of \$6 million to local charities that focus on education, child and spouse abuse, and family health.
- \* Camp Courant, a free day-camp in Farmington for urban youth who cannot afford camp, is run out of the *Courant* offices and promoted through a series of PSAs run on the Stations. Funding has been supplied by the Stations and the *Courant*, and supports providing food and medical attention for children participating in the program.
- \* “Project Choice – Mentor,” a program affiliated with Big Brothers/Big Sisters.
- \* “Everybody Wins,” a program using volunteers to read to children, to encourage children to read, and to help children learn to read.
- \* “March of Dimes,” including several local events jointly sponsored by The Stations and the *Courant*.

While it is true that all Tribune media outlets are active in their local communities, regardless of common ownership with a local newspaper, the television-newspaper combination in Hartford specifically works to coordinate and extend their projects in ways not available to stand-alone stations. Specifically, personnel from the Stations and the newspaper coordinate projects to share responsibilities, and are able to jointly promote each other's community efforts in ways that competing media businesses avoid.

**III. Tribune Should Be Permitted to Own WTIC, WTXX and the *Courant* Pending Completion of the Commission's Action on the *FNPRM*.**

Under the standard announced by the Commission in its *Notice of Inquiry* in 1998, a waiver pending a rulemaking is warranted "where protracted rulemaking proceedings are involved and where a substantial record exists on which to base a preliminary inclination to relax or eliminate a rule."<sup>113</sup> Temporary relief pending the completion of rulemaking proceedings is particularly appropriate where the Commission can conclude that "the application before it falls within the scope of the proposals in the proceeding, and a grant of an interim waiver would be consistent with the Commission's goals of competition and diversity."<sup>114</sup> From the facts set forth above, it is clear that the Hartford/New Haven media marketplace is intensely competitive and diverse, and has not suffered harm as a result of Tribune's common ownership of WTIC, WTXX and the *Courant* over the last six years. Instead, viewers in the market benefit from the enhanced news and public affairs programming that combined ownership makes possible. Thus, Tribune is entitled to a temporary waiver of the Rule pending completion of the Commission's protracted proceeding resolving the *FNPRM*.

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<sup>113</sup> *Notice of Inquiry*, 13 FCC Rcd. at 11294.

<sup>114</sup> *Id.*

**A. A Substantial Record Exists in a Protracted Proceeding.**

As Tribune demonstrates in this waiver request, the protracted nature of this rulemaking proceeding – “where a substantial record exists on which to base a preliminary inclination to relax or eliminate” the Rule – is uncontroverted. Almost four years ago, the Commission adopted findings that resulted in its elimination of the Rule; those findings were based on two years of proceedings that included at least three rounds of comments, and the conduct of multiple studies and hearings. As the Third Circuit’s opinion in *Prometheus* makes clear, the relaxation of the blanket prohibition on cross-ownership of newspapers and broadcast stations is not in doubt. The Commission adopted, and the court upheld, at least three salient rationales for its elimination and relaxation of the Rule. First, the Commission concluded that newspaper-broadcast combinations generally “cannot adversely affect competition in any relevant product market,” thus making the Rule no longer necessary to protect competition.<sup>115</sup> Second, the Commission held that newspaper-broadcast combinations promote the public interest by delivering more and better local coverage of news and public affairs, and that the Rule actually inhibits such programming and benefits.<sup>116</sup> Finally, the Commission found that the record in the proceeding did not support the conclusion that “common ownership of broadcast stations and daily newspapers in the same community poses a widespread threat to diversity of viewpoint or programming.”<sup>117</sup> The Third Circuit did not take issue with these findings and conclusions — they stand. The Commission would be acting arbitrarily and capriciously if, in the

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<sup>115</sup> See *2003 Order*, 18 FCC Rcd. at 13748-49, 13752-53, 13767.

<sup>116</sup> *Id.* at 13753-54, 13756-57, 13759-60.

<sup>117</sup> *Id.* at 13767.

context of the instant waiver request, it ignored the conclusions it reached in its rulemaking proceeding, especially those findings upheld by the Third Circuit.

The protracted procedural posture of this case, where Tribune has sought and the Commission has promised appropriate relief for more than a decade, further demonstrates the appropriateness of the grant of a temporary waiver pending the conclusion of the rulemaking proceeding:

- \* More than ten years ago, in several adjudications, the Commission committed to commence a rulemaking regarding the Rule, with all Commissioners recognizing the public interest in relaxation of the rule.
- \* More than seven years ago, the Commission concluded in its *1998 Biennial Regulatory Review* that the Rule needed to be modified.
- \* In releasing its *2000 Biennial Regulatory Review*, the Commission confirmed this conclusion and in 2001, issued a Notice of Proposed Rulemaking to achieve this result.
- \* In 2003, the Commission, after extended proceedings, including rounds of comments, studies and hearings, made detailed findings that supported its conclusion that the Rule was no longer justifiable, and repealed the Rule, replacing it with specific cross-media limits that would permit Tribune's common ownership of the Stations and the *Courant*.
- \* In 2004, the Third Circuit affirmed the portion of the Commission's *2003 Order* that the blanket ban contained in the Rule should be repealed, but remanded the proposed new rules for further support or amendment.
- \* More than two years later, the Commission released its *FNPRM*, and despite a tentative conclusion not to revive the "diversity index" in its prior form, specifically asked whether it should retain the 2003 cross-media limits because they can be justified with additional evidence or analysis, or amend them.

The present case therefore involves the very type, indeed an almost perfect example, of the "protracted rulemaking proceeding" that the Commission envisioned warranting temporary relief for applicants; it is nothing like the situation where the Commission wished to avoid such interim

relief requested based solely on the initiation of a quadrennial review.<sup>118</sup> Tribune's request for a temporary waiver pending completion of the Commission's *FNPRM* is much more than a request based on "the mere initiation of a proceeding stating that the rule would be examined, or merely the fact that such a proceeding was on the horizon."<sup>119</sup> As shown above, in extensive proceedings that have taken more than seven years, the Commission has adopted findings and conclusions that led it to repeal the Rule, and those findings were upheld by the Third Circuit.

**B. Tribune's Request is Within the Scope of the Adopted Rule.**

As part of this longstanding rulemaking proceeding, the Commission has adopted restrictions on the cross-ownership of broadcast stations and daily newspapers which, if effective, would permit the ownership combination that is the subject of Tribune's waiver request. The cross-media limits adopted to replace the Rule in the *2003 Order*, though stayed by the Third Circuit, would permit the common ownership of all of Tribune's media properties in Connecticut, including WTIC, WTXN and the *Courant*. Tribune can therefore demonstrate that its request for an interim waiver pending the completion of these proceedings "falls within the scope of the proposals in the proceeding."<sup>120</sup>

The Commission's longstanding policy, recognized in the *Notice of Inquiry*, of providing temporary waivers where specific rules have been proposed in rulemakings that, if adopted, would provide relief, is consistent with sound law and policy. As Tribune demonstrates, having adopted rules in 2003 that would not require divestiture, the Commission

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<sup>118</sup> *Notice of Inquiry*, 13 FCC Rcd. at 11294.

<sup>119</sup> *UTV of San Francisco, Inc.*, 16 FCC Rcd. 14975, 14988 (2001) quoting *Renaissance Communications*, 13 FCC Rcd. 4717, 4719 (1998).

<sup>120</sup> *Notice of Inquiry*, 13 FCC Rcd. at 11294.

should not and cannot now reasonably force divestiture of one of Tribune's media properties without providing a reasoned basis for departing from the limits adopted in the *2003 Order*. As the Commission must recognize, the Rule survives only in a procedural posture: the Commission eliminated the Rule based on the conclusion that it no longer was justified in its 1975 form as the result of current media conditions. The Rule was replaced by cross-media limits that were stayed pending appeal, and which now await further action by the Commission after the Third Circuit's decision in *Prometheus*.<sup>121</sup> The Rule now is in effect not because the Commission believes it continues to serve the public interest, but because the Commission's action to scrap and scale back the Rule has taken years to complete. In such a procedural posture, the Commission traditionally has granted temporary waivers pending the completion of rulemaking proceedings, and should do so here, both to comport with the Commission's findings upheld by the Third Circuit, and to serve the public interest against forcing the divestiture of WTIC or WTXN pending the FCC's conclusion of its longstanding rulemaking proceeding.<sup>122</sup>

**C. Tribune Has Been Unable to Sell the Stations.**

Tribune also is entitled to a waiver pending the rulemaking based on its inability to sell the Stations except at an artificially depressed price. Under the Commission's waiver policy, a waiver of the Rule is appropriate where a combination cannot sell a station, or a

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<sup>121</sup> See *supra* at 10-11.

<sup>122</sup> *Notice of Inquiry*, 13 FCC Rcd. at 11294; see also *National Exchange Carrier Association Petition To Amend Section 69.104*, 19 FCC Rcd. 13591 n.116 (2004) ("Grant of a waiver pending the result of a rulemaking proceeding is consistent with Commission precedent"); *Administration of the North American Numbering Plan*, 20 FCC Rcd. 2957 (2005) (granting a waiver of a rule to permit obtaining numbering resources directly from NANPA after considering hardship and equities to SBC); *2000 Biennial Regulatory Review of Part 68*, 15 FCC Rcd. 10525 (2000) (recognizing public interest in grant of interim waivers in anticipation of completing rulemakings that will effectuate a change in the rules to accommodate innovations on a permanent basis).

combination cannot sell a station except at an artificially depressed price.<sup>123</sup> Tribune has attempted to find a buyer for WTXX, and for the Stations together, since before the time it acquired WTXX.<sup>124</sup> No prospective purchaser has made an offer for WTXX or the Stations that does not include unacceptable terms (that Tribune views as contrary to the public interest) or is of sufficient value to permit Tribune to receive a fair exchange for its investment in the Stations.

Between April 2000 and July 2001, prior to receipt of final approval of its acquisition of WTXX, Tribune contacted potential purchasers of television stations to elicit interest in the possibility of a purchase or swap of WTIC and WTXX. Tribune focused on those groups who, at that time, owned Fox or WB-affiliated television stations in the belief that the WTIC and WTXX duopoly would appeal more to those broadcasters than to others. Discussions with four significant group television station owners advanced to the point that confidential nondisclosure agreements (“NDAs”) were signed. Tribune pursued discussions where even minimal interest was expressed, but no mutually agreeable deal materialized from these negotiations.

Tribune’s efforts to sell the Stations continue to the present day. In September 2006, two prospective buyers entered into NDAs and were provided with the WTXX offering memorandum. One of these prospects submitted a non-binding indication of interest in acquiring WTXX at a value significantly below the broker’s estimate of the station’s value based on

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<sup>123</sup> *1975 Order*, 50 F.C.C.2d at 1085; *Newspaper-Broadcast NPRM*, 16 FCC Rcd. at 17284-85.

<sup>124</sup> Tribune’s efforts to sell are detailed more extensively in its request for a “failing station” waiver for WTXX, filed concurrently herewith. Additionally, Dr. Fratrick has included in his declaration an explanation of the difficulty in selling stations during the period 2002 to 2006. *See* BIA Fratrick Declaration ¶¶ 10-16.

comparable station sales. The other prospect continues to review the station materials at this time, and has expressed interest only in purchasing the WTIC-WTXX combination.<sup>125</sup>

As the Commission recently recognized, in considering this very combination, a continued waiver of the Rule was appropriate in part because “requiring a divestiture at this time is likely to result, at best, in a sale at an artificially depressed price....”<sup>126</sup> As Tribune continues to make efforts to sell the Stations, and during the pendency of the rulemaking proceeding that may alleviate such obligation, Tribune is entitled to a temporary waiver of the Rule.<sup>127</sup>

**D. The Public Interest Would Be Served by the Interim Waiver.**

The public interest would be disserved by Tribune’s divestiture of WTIC or WTXX and would be better served by continuation of the current ownership during the interim period in which the Commission resolves its proposal in the *FNPRM*.<sup>128</sup> Whether under the standard for a temporary waiver pending a rulemaking or the fourth criterion for a waiver of the Rule under the 1975 standard – where, “*for whatever reason*, the purposes of the rule would be disserved”<sup>129</sup> – the Commission must grant waivers in precisely the kind of situation Tribune

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<sup>125</sup> At the beginning of 2006, Tribune and its broker had revised the offering memorandum with current financial data and updated market information and reinitiated broad marketing efforts to sell the Stations. In June 2006, Tribune’s broker was contacted by two parties interested in the potential acquisition of WTXX. One party executed an NDA and reviewed the offering memorandum, but decided not to pursue any negotiations for an agreement to purchase WTXX. The remaining party did not choose to execute an NDA.

<sup>126</sup> *Counterpoint III*, 20 FCC Rcd. 8582, 8585 (2005).

<sup>127</sup> See, e.g., *K. Rupert Murdoch, (Transferor) and Fox Entertainment Group, (Transferee)*, 21 FCC Rcd. 11499, 11502 (2006) (granting a waiver of the Rule to avoid a “forced sale of a media interest at an *artificially depressed price*” to achieve compliance with the multiple ownership rules) (emphasis added); *Kortes Communications, Inc.*, 15 FCC Rcd. 11846, 11853 (2000) (considering, *inter alia*, “the inability to attract any interested buyer in several years” in granting a permanent waiver of the Rule)

<sup>128</sup> See *id.*; *1975 Order*, 50 F.C.C.2d at 1085.

<sup>129</sup> *Newspaper-Broadcast NPRM*, 16 FCC Rcd. at 17285 (emphasis added).

demonstrates here: where Tribune would comply with the proposed new rule and there is no diminution in the diversity of viewpoints in the market that has occurred or is likely to occur. Here, a waiver would foster the diversity of viewpoints and programming because the media marketplace in the Hartford/New Haven DMA already is vibrant and diverse, and the combination of the Stations and the *Courant* has provided new and enhanced opportunities for news and public interest programming.

Tribune thus should receive a temporary waiver of the Rule pending completion of the *FNPRM* proceeding because the combination of the Stations and the *Courant* does not adversely alter the diversity or competitive nature of the market. As demonstrated extensively above, the Hartford/New Haven DMA has only grown more diverse and competitive during the period of Tribune's common ownership of the Stations and the *Courant*. There are 11 television stations, 12 daily newspapers, and 76 radio stations that serve the market, as well as numerous other sources of news and information of local interest, including cable channels, satellite radio stations, weekly newspapers and magazines, and Internet websites. Furthermore, there are direct and measurable public interest benefits in the form of increased and improved ability to provide news and public affairs programming on issues of local importance as a direct result of the common ownership of the Stations and the *Courant*. Tribune's common ownership allows WTIC and WTXX to provide a strong competing newscast for the three major network-newscasts in the market – competitor in the provision of news that likely would not exist without Tribune's efforts.

Faced with these facts and its own conclusions, the Commission must grant Tribune an interim waiver pending completion of the rulemaking. The Commission should be

near the conclusion of its protracted proceeding to replace the Rule. The rule adopted in June 2003, with which Tribune would be in compliance, may be amended during the course of proceedings on the *FNPRM*, but the Commission has not yet articulated any basis for such a conclusion. Until the Commission articulates some reasoned basis for an alternative rule that is consistent with the findings that resulted in the repeal of the Rule that was upheld by the Third Circuit, the Commission's articulated standards for a temporary waiver require that Tribune be granted such relief.

The Commission should recognize that under the principles enunciated in *RTNDA*, it cannot continue to enforce the Rule without careful analysis of its application, now that the rationale for the Rule in its present form has been expressly undercut, and where facts have been shown that warrant the grant of a temporary waiver under the standard set forth in the *Notice of Inquiry*.<sup>130</sup> In *RTNDA*, the D.C. Circuit concluded that, having conducted rulemakings in which it found that the rationales underlying the political editorial and personal attack rules no longer survived, the Commission could not continue to enforce the rules against its television licensees without further detailed and factual support. The Commission had years earlier concluded that the balancing of objectives underlying those rules no longer supported their continued application.

In the same way, the Commission has now recognized that the Rule in its present form disserves the public interest, and must, at a minimum, be replaced. Having adopted such a conclusion in 2003, as well as new limits with which Tribune complies, the Commission cannot

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<sup>130</sup> *RTNDA*, 184 F.3d at 887.

now reasonably force divestiture of one of Tribune's media properties without providing a reasoned basis for departing from the findings made after careful analysis in the *2003 Order*.

Moreover, it would be arbitrary and capricious for Tribune to be denied a temporary waiver to own the Stations and the *Courant* when either Station could be owned in common with other market-leading television stations. At the time it adopted the Rule, the Commission justified its onerous restriction on the rights of newspaper owners by stating that owners of television and radio stations in the market also could not acquire a cross-ownership interest in another medium of mass communications.<sup>131</sup> The Commission already has liberalized almost all of its other broadcast ownership rules and their corresponding waiver policies in response to the same changes in the media marketplace that warrant revision of the Rule. Most specifically, the Commission relaxed the Rule's companion prohibition on combined ownership of television stations and radio stations in the same market (the "one-to-a-market rule").<sup>132</sup> At the same time that it relaxed the one-to-a-market rule, the Commission substantially revised the television "duopoly" rule, permitting the ownership of two television stations in the same market where at least eight independently owned stations would exist after the combination.<sup>133</sup> Both of these rules, which were in effect at the time of the adoption of the Rule in 1975, were adopted based on precisely the same rationale that underlies the Rule, and then substantially modified for precisely the same reasons that the Commission adopted when it modified the Rule.<sup>134</sup>

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<sup>131</sup> *1975 Order*, Reconsideration Order, 53 F.C.C.2d 589 (1975).

<sup>132</sup> *Review of the Commission's Regulations Governing Television Broadcasting*, 14 FCC Rcd. 12903, 12947 (1999) ("*Television Ownership Order*").

<sup>133</sup> *Id.* at 12932.

<sup>134</sup> *See id.* at 2948-50.

The Commission also must grant Tribune’s request for a temporary waiver of the Rule because the current application of the Rule in such circumstances violates Tribune’s First Amendment right to free speech and Fifth Amendment equal protection right. The restriction violates the equal protection component of the Fifth Amendment’s Due Process Clause because the Rule singles out and subjects newspaper owners such as Tribune to restrictions on speech that are not applied to other speakers, including other broadcast stations.<sup>135</sup> “Laws that single out the press, or certain elements thereof,” are subject to “heightened scrutiny.”<sup>136</sup> To survive scrutiny under this burden, discrimination among speakers “must be tailored to serve a substantial government interest.”<sup>137</sup> The Rule cannot survive such heightened scrutiny because the burden of the restrictions on newspaper owners in contrast to other owners of “major media of mass communications” is no longer justifiable. While over 25 years ago the Supreme Court held that the regulations in question “treat newspaper owners in essentially the same fashion as other owners of the major media of mass communications,”<sup>138</sup> today the speech of newspaper owners is singled out for unfavorable treatment in important ways not applicable to other owners of major media — cable television system owners, cable program networks, magazine publishers, or Internet website providers, for example. The Commission’s recent assessment of competition in the provision of video services, and its conclusions regarding the transformation of media over

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<sup>135</sup> The Rule similarly discriminates against Tribune as a broadcaster, because cable networks can be commonly owned with newspapers and accumulate large numbers of other “voices” in ways that are unavailable to broadcasters.

<sup>136</sup> *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 640-41 (1994).

<sup>137</sup> *Police Department of Chicago v. Mosley*, 408 U.S. 92, 99 (1972); *see also Minneapolis Star and Tribune Co. v. Minnesota Commissioner of Revenue*, 460 U.S. 575, 585, 592-93 (1983) (finding such differential regulation “presumptively unconstitutional” and that it “places a heavy burden on the [government] to justify its action”).

<sup>138</sup> *FCC v. NCCB*, 436 U.S. 775 (1978).

the past quarter-century, confirm that such media are “major media” free from the cross-ownership restriction.<sup>139</sup>

The Commission has found, on the basis of an extensive record, that prohibiting common ownership of broadcast stations and newspapers in the largest markets unnecessarily restricts speech and specifically is likely to result in less local news and public affairs programming. The Third Circuit upheld the Commission’s reasoning in these respects. Infringing Tribune’s speech rights is particularly unjustified where Tribune media properties’ market shares have declined during the period of common ownership, the Commission already has concluded that the risks to diversity are virtually non-existent, and application of the Rule would silence Tribune as a speaker in either television or newspaper publishing in Hartford.<sup>140</sup> To the extent that the Rule is overbroad or overly restrictive in achieving its goal, prohibiting more speech than is necessary to achieve its goals, application of the Rule and the thirty-year old waiver policy unnecessarily inhibits speech. To continue to apply the rule to Tribune in these circumstances cannot be justified, and the Commission must grant Tribune a temporary waiver to permit common ownership of WTIC, WTXN and the *Courant* until its actions with respect to the *FNPRM* are final.

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<sup>139</sup> See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Eleventh Annual Report, FCC 05-13, MB Docket No. 04-227 (released Feb. 4, 2005); see also *2003 Order*, 18 FCC Rcd. at 13647-67.

<sup>140</sup> See *2003 Order*, 18 FCC Rcd. at 13804-06. That the Third Circuit has called into question the precise basis for the Commission’s line-drawing does not alter this conclusion. The Commission’s conclusions regarding the harm to speech interests caused by the Rule are untouched, as are its conclusions regarding the competing sources of information.

## **Appendix 1 – Declaration of Mark Fratrick**

## Appendix 2: Satellite Radio Stations in the Hartford Market

XM Satellite Radio			Sirius Satellite Radio		
Channel Number	Channel Name	Description	Channel Number	Channel Name	Description
Ch. 4	The 40s	Big Band/Swing/40s Hits	Ch. 1	SIRIUS Hits 1	Top 40 Hits
Ch. 5	The 50s	50s Hits	Ch. 2	StarLite	Lite Pop
Ch. 6	The 60s	60s Hits	Ch. 3	SIRIUS Love	Love Songs
Ch. 7	The 70s	70s Hits	Ch. 4	Movin' Easy	Easy Listening
Ch. 8	The 80s	80s Hits	Ch. 5	SIRIUS Gold	The '50s
Ch. 9	The 90s	90s Hits	Ch. 6	'60s Vibrations	The '60s
Ch. 10	America	Classic Country	Ch. 7	Totally '70s	The '70s
Ch. 11	Nashville, Regional News and Talk	90s & Today Country	Ch. 8	Big '80s	The '80s
Ch. 12	X Country	Americana	Ch. 9	The Pulse	The '90s & Now
Ch. 13	Willie's Place	Traditional Country	Ch. 10	The Bridge	Mellow Rock
Ch. 14	Bluegrass Junction	Bluegrass	Ch. 11	BBC Radio 1	New Music from the U.K.
Ch. 15	The Village	Folk	Ch. 12	Super Shuffle	SIRIUS Super Mix
Ch. 16	Highway 16	New Country Hits	Ch. 13	Elvis Radio	All Elvis Presley
Ch. 17	US Country	Superstar Country Hits of 80's and 90's	Ch. 14	Classic Vinyl	Early Classic Rock
Ch. 20	Top 20 on 20	Top 20 Hits	Ch. 15	Classic Rewind	Later Classic Rock
Ch. 21	KISS	Contemporary Hits	Ch. 16	The Vault	Deeper Classic Rock
Ch. 22	Mix	Modern Adult Hits	Ch. 17	Jam_ON	Jam Bands
Ch. 23	The Heart	All Love Songs 24/7	Ch. 18	The Spectrum	Adult Album Rock
Ch. 24	Sunny	Soft Pop Oldies	Ch. 19	Buzzsaw	Classic Hard Rock
Ch. 26	Flight 26	Modern Hits 90s & Now	Ch. 20	Octane	Pure Hard Rock
Ch. 27	Cinemagic	Movie Soundtracks	Ch. 21	Alt Nation	Alternative Rock

XM Satellite Radio			Sirius Satellite Radio		
Channel Number	Channel Name	Description	Channel Number	Channel Name	Description
Ch. 28	On Broadway	Show Tunes	Ch. 22	First Wave	Classic Alternative
Ch. 29	U-Pop	Global Chart Hits	Ch. 23	Hair Nation	80s Hair Bands
Ch. 30	XM HitList	Today's Hits	Ch. 24	Lithium	90s Alternative
Ch. 32	The Message	Christian Pop & Rock	Ch. 25	Underground Garage	Garage Rock
Ch. 33	Spirit	Gospel	Ch. 26	Left of Center	New/College/Indie Rock
Ch. 34	enLighten	Southern Gospel	Ch. 27	Hard Attack	Heavy Metal
Ch. 40	Deep Tracks	Deep Album Rock	Ch. 28	Faction	Punk, Hip-Hop, Hard Rock Mix
Ch. 41	Boneyard	Hard Rock/Hairbands – XL	Ch. 29	Punk	Punk Rock
Ch. 42	Liquid Metal	Heavy Metal – XL	Ch. 30	The Coffee House	Singer-Songwriters and Acoustic
Ch. 43	XMU	Indie/College Rock	Ch. 31	Radio Margaritaville	Escape to Margaritaville
Ch. 44	Fred	Classic Alternative	Ch. 32	Reggae Rhythms	Reggae
Ch. 45	XM Café	Soft Alternative	Ch. 33	Area 33	Trance & Progressive House
Ch. 46	Top Tracks	Classic Rock	Ch. 34	Boombox	Breakbeats/Old Skool
Ch. 47	Ethel	Modern Rock	Ch. 35	Chill	Smooth Electronic
Ch. 48	Squizz	Hard Alternative – XL	Ch. 36	The Beat	Dance Hits
Ch. 49	Big Tracks	Later Classic Rock	Ch. 37	The Strobe	Disco/Classic Dance
Ch. 50	The Loft	Acoustic Rock	Ch. 40	Hip-Hop Nation	Non-stop Hip-Hop 24/7
Ch. 52	The Verge	New/Emerging Artists	Ch. 43	BackSpin	Old Skool Rap
Ch. 53	Fungus	Punk/Hardcore/Ska – XL	Ch. 45	Shade 45	Shady's Uncut Hip-Hop
Ch. 54	Lucy	Modern Rock Hits	Ch. 50	Hot Jamz	Hip-Hop and R&B Hits

XM Satellite Radio			Sirius Satellite Radio		
Channel Number	Channel Name	Description	Channel Number	Channel Name	Description
Ch. 60	Soul Street	Classic Soul	Ch. 51	Heart & Soul	R&B Hits
Ch. 62	Suite 62	Adult R&B Hits	Ch. 53	Soul Town	Hip-Hop/R&B
Ch. 64	The Groove	Old Skool R&B	Ch. 60	New Country	Today's Country Hits
Ch. 65	The Rhyme	Snoop Dogg's Classic Hip/Hop/Rap – XL	Ch. 61	Prime Country	'80s & '90s Country Hits
Ch. 66	RAW	New Uncut Hip-Hop – XL	Ch. 62	The Roadhouse	Classic Country
Ch. 67	The City	Urban Contemporary	Ch. 63	Outlaw Country	Outlaw country
Ch. 68	The Heat	Rhythmic Top 40	Ch. 65	Bluegrass	Bluegrass
Ch. 70	Real Jazz	Traditional Jazz	Ch. 66	Spirit	Christian Hits
Ch. 71	Watercolors	Smooth Jazz	Ch. 68	Praise	Gospel
Ch. 72	Beyond Jazz	Modern Jazz	Ch. 70	Planet Jazz	Contemporary Jazz
Ch. 73	High Standards	American Standards	Ch. 71	Jazz Café	Smooth Jazz
Ch. 74	Bluesville	Blues	Ch. 72	Pure Jazz	Classic Jazz
Ch. 75	Hear Music	The Voice of Music at Starbucks	Ch. 73	Spa 73	New Age
Ch. 76	Fine Tuning	Eclectic	Ch. 74	SIRIUS Blues	Blues
Ch. 77	Audio Visions	New Age	Ch. 75	Standard Time	Standards/ Swing
Ch. 78	Escape	Easy Listening	Ch. 77	Broadway's Best	Broadway Show Music
Ch. 80	The Move	Underground Dance	Ch. 80	Symphony Hall	Symphonic and Chamber Music
Ch. 81	BPM	Dance Hits	Ch. 85	Metropolitan Opera Radio	Opera
Ch. 82	The System	Electronica	Ch. 86	SIRIUS Pops	Classical Pops
Ch. 83	Chrome	Disco	Ch. 90	Universo Latino	Latin Pop Mix
Ch. 84	XM-Chill	Chill Music	Ch. 92	Rumbon	Reggaeton/Tropical
Ch. 90	Fuego	Reggaeton	Ch. 93	bande a part	New French-language Music

XM Satellite Radio			Sirius Satellite Radio		
Channel Number	Channel Name	Description	Channel Number	Channel Name	Description
Ch. 91	Viva	Latin Pop Hits	Ch. 94	CBC Radio 3	Canadian Indie Music
Ch. 92	Aguila	Regional Mexican	Ch. 95	Iceberg Radio	Canadian Adult Alternative
Ch. 94	Caliente	Tropical	Ch. 97	Reggae Rhythms	Reggae
Ch. 100	Air Musique	New & Emerging Music – Broadcast in French	Ch. 100	Howard 100	Howard Stern
Ch. 101	The Joint	Reggae	Ch. 101	Howard 101	Howard Stern
Ch. 102	Sur La Route	Pop Hits Broadcast in French	Ch. 102	SIRIUS Stars	The SIRIUS Difference
Ch. 110	XM Classics	Traditional Classical	Ch. 103	Blue Collar Comedy	All-American Comedy with universal appeal
Ch. 112	Vox	Opera/ Classical Vocals	Ch. 104	Raw Dog	Comedy Uncensored
Ch. 113	XM Pops	Popular Classical	Ch. 105	Laugh Break	Comedy
Ch. 115	Radio Disney	Radio Disney	Ch. 106	The Foxxhole	Comedy
Ch. 116	XM Kids	Children	Ch. 107	E! Entertainment Radio	E! Entertainment Radio
Ch. 120	XM Live	Concerts/ Festivals/ Special Features	Ch. 108	Maxim Radio	Maxim Radio
Ch. 121	FOX News	FOX News	Ch. 109	SIRIUS OutQ	America's GLBT Radio Station
Ch. 122	CNN	CNN News	Ch. 110	Court TV Radio	Court TV Radio
Ch. 123	CNN Headline News	CNN Headline News	Ch. 111	Cosmo Radio	Cosmo Radio
Ch. 124	ABC News & Talk	ABC News & Talk	Ch. 112	Martha Stewart Living Radio	How-to and homekeeping
Ch. 125	The Weather Channel	The Weather Channel	Ch. 114	LIME	Healthy living with a twist
Ch. 126	CNN en Español	CNN in Spanish	Ch. 115	Radio Disney	Radio Disney

XM Satellite Radio			Sirius Satellite Radio		
Channel Number	Channel Name	Description	Channel Number	Channel Name	Description
Ch. 127	CNBC	CNBC	Ch. 116	Kids Stuff	Kids
Ch. 129	Bloomberg Radio/Business	Bloomberg Radio/Business	Ch. 118	RadioClassics	Classic Radio Shows
Ch. 131	BBC World Service	BBC World Service	Ch. 119	Sports Play-by-Play 4	Play-by-Play
Ch. 132	C-SPAN Radio	C-SPAN Radio	Ch. 120	ESPN Radio	ESPN Radio
Ch. 133	XM Public Radio	XM Public Radio	Ch. 121	ESPNEWS	ESPN News
Ch. 140	ESPN Radio	Sports	Ch. 122	Sports Play-by-Play 1	Sports Talk and Play-by-Play
Ch. 141	ESPNEWS	The Definitive 24-hour Sports News Network	Ch. 123	SIRIUS Sports Action	Sports Talk and Play-by-Play
Ch. 142	FOX Sports Radio	Sports Talk	Ch. 124	SIRIUS NFL Radio	Nonstop NFL Talk
Ch. 143	XM Sports Guide	Sports	Ch. 125	Sports Play-by-Play 2	Play-by-Play
Ch. 144	XM Sports Nation	Sports	Ch. 126	Sports Play-by-Play 3	Play-by-Play
Ch. 145	IndyCar Series Racing	IndyCar Series Racing	Ch. 127	NBA Radio on SIRIUS	NBA Radio on SIRIUS
Ch. 146	PGA TOUR Network	Golf Talk	Ch. 128	SIRIUS NASCAR Radio	24/7/365 NASCAR
Ch. 147	XM Deportivo	Spanish Sports Talk	Ch. 129	CNBC	CNBC
Ch. 150	XM Comedy	Uncensored Comedy – XL	Ch. 130	Bloomberg Radio	Bloomberg Radio
Ch. 151	Laugh USA	Comedy	Ch. 131	Fox News Channel	Fair and Balanced News
Ch. 152	Extreme XM	Extreme Talk	Ch. 132	CNN	The Most Trusted Name in News
Ch. 153	Laugh Attack	Uncensored Comedy –XL	Ch. 133	CNN Headline News	CNN Headline News
Ch. 154	National Lampoon Comedy Radio	Comedy	Ch. 134	NPR Now	NPR Now
Ch. 155	Take Five	Women’s Talk & Lifestyle	Ch. 135	NPR Talk	NPR Talk
Ch. 156	Oprah & Friends	Oprah & Friends	Ch. 137	CBC Radio One	National/International News

<b>XM Satellite Radio</b>			<b>Sirius Satellite Radio</b>		
<b>Channel Number</b>	<b>Channel Name</b>	<b>Description</b>	<b>Channel Number</b>	<b>Channel Name</b>	<b>Description</b>
Ch. 161	WSIX	Nashville Country	Ch. 138	Premiere Plus	Canadian Current Affairs
Ch. 162	E! Entertainment Radio	Entertainment	Ch. 139	C-SPAN Radio	C-SPAN Radio
Ch. 163	Sonic Theater	Books & Drama	Ch. 140	World Radio Network	News Around the World
Ch. 164	Radio Classics	Old Time Radio	Ch. 141	BBC World Service News	BBC World Service News
Ch. 165	Talk Radio	Experts Talk	Ch. 143	ABC News & Talk	ABC News & Talk
Ch. 166	America Right	Conservative Talk	Ch. 144	SIRIUS Patriot	Conservative Values
Ch. 167	Air America Radio	Progressive Talk	Ch. 145	Fox News Talk Channel	FOX News Talk
Ch. 168	FOX News Talk	FOX News Talk	Ch. 146	SIRIUS Left	Liberal Talk
Ch. 169	The Power	African-American Talk	Ch. 147	Road Dog Trucking	Talk for Truckers
Ch. 170	FamilyTalk	Christian Talk	Ch. 159	The Catholic Channel	The Catholic Channel
Ch. 171	Open Road	Truckers' Channel	Ch. 160	EWTN Global Catholic Network	EWTN Radio Catholic Network
Ch. 172	Sport Plus	Men's Lifestyle and Sports Talk - Broadcast in French	Ch. 161	Christian Talk	Christian Talk
Ch. 173	WLW	News Talk	Ch. 181	ESPN Deportes	ESPN Deportes Radio
Ch. 174	MLB Play by Play en Español	Play-by-Play MLB Action en Español	Ch. 182	CNN En Español	CNN En Español
Ch. 175	MLB Home Plate	24/7 Major League Baseball Channel	Ch. 183	Radio Korea	Korean Language Radio
Ch. 176	MLB Play-by-Play	Play-by-Play MLB Action	Ch. 184	SIRIUS Weather & Emergency	SIRIUS Weather & Emergency
Ch. 177	MLB Play-by-Play	Play-by-Play MLB Action	Ch. 185	Canada Weather	Canada Weather

XM Satellite Radio			Sirius Satellite Radio		
Channel Number	Channel Name	Description	Channel Number	Channel Name	Description
Ch. 178	MLB Play-by-Play	Play-by-Play MLB Action	Ch. 187	Info Plus	All News Radio
Ch. 179	MLB Play-by-Play	Play-by-Play MLB Action	Ch. 188	RCI Plus	International Talk
Ch. 180	MLB Play-by-Play	Play-by-Play MLB Action	Ch. 192	Rock Velours	Canadian Soft Rock
Ch. 181	MLB Play-by-Play	Play-by-Play MLB Action	Ch. 193	Energie 2	Pop, Rock & Urban Music
Ch. 182	MLB Play-by-Play	Play-by-Play MLB Action	Ch. 198	Playboy Radio	Smart, sexy and sophisticated programming
Ch. 183	MLB Play-by-Play	Play-by-Play MLB Action			
Ch. 184	MLB Play-by-Play	Play-by-Play MLB Action			
Ch. 185	MLB Play-by-Play	Play-by-Play MLB Action			
Ch. 186	MLB Play-by-Play	Play-by-Play MLB Action			
Ch. 187	MLB Play-by-Play	Play-by-Play MLB Action			
Ch. 188	MLB Play-by-Play	Play-by-Play MLB Action			
Ch. 189	MLB Play-by-Play	Play-by-Play MLB Action			
Ch. 190	College Sports-ACC	ACC Sports			
Ch. 191	College Sports-ACC	ACC Sports			
Ch. 192	College Sports-ACC	ACC Sports			
Ch. 193	College Sports-PAC-10	PAC-10 Sports			
Ch. 194	College Sports-PAC-10	PAC-10 Sports			
Ch. 195	College Sports-PAC-10	PAC-10 Sports			
Ch. 196	College Sports-Big 10	Big Ten Sports			
Ch. 197	College Sports-Big 10	Big Ten Sports			
Ch. 198	College Sports-Big 10	Big Ten Sports			

XM Satellite Radio			Sirius Satellite Radio		
Channel Number	Channel Name	Description	Channel Number	Channel Name	Description
Ch. 199	College Sports-SEC	SEC Sports			
Ch. 200	College Sports-SEC	SEC Sports			
Ch. 201	College Sports-SEC	SEC Sports			
Ch. 202	The Virus	Opie & Anthony! – XL			
Ch. 203	College Sports-Big East	Big East Sports			
Ch. 204	Home Ice	NHL Talk and Play-by-Play			
Ch. 205	Home Ice	NHL Talk and Play-by-Play			
Ch. 206	Home Ice	NHL Talk and Play-by-Play			
Ch. 207	Home Ice	NHL Talk and Play-by-Play			
Ch. 208	Home Ice	NHL Talk and Play-by-Play			
Ch. 209	Home Ice	NHL Talk and Play-by-Play			
Ch. 243	ReachMD	Channel for Healthcare Professionals			
Ch. 244	Canada 360	News & Information			
Ch. 245	Quoi de Neuf	News & Information in French			
Ch. 247	XM Emergency Alert 24/7	24/7 Emergency Information			

**Sources:** XM Radio, Sirius Satellite Radio  
Current as of April 20, 2007

